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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

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WHEN: May 26; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Laurice Clark, 202–523–3517

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WHERE: Room 147–148, Federal Building, 601 East 12th Street, Kansas City, MO
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WHEN: June 13; at 1:00 p.m.
WHERE: Room 305C, 26 Federal Plaza, New York, NY
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center, 212–264–4810.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 5801 of April 26, 1988

Mother's Day, 1988

By the President of the United States of America

A Proclamation

Maternal love is the first tangible bond any human being knows. It is a tie at once physical, emotional, psychological, and mystical. With all of the words that have been written about motherhood, all of the poems of tribute and gratitude that have been penned through the ages, all of the portraits of mother and child that have been painted down the centuries, none has come close to expressing in full the thankfulness and joy owing to mothers.

The mark of motherhood, as the story of Solomon and the disputed infant in the first Book of Kings shows, is a devotion to the well-being of the child so total that it overlooks itself and its own preferences and needs. It is a love that risks all, bears all, braves all. As it heals and strengthens and inspires in its objects an understanding of self-sacrifice and devotion, it is the parent of many another love as well.

The arms of a mother are the newborn's first cradle and the injured child's first refuge. The hands of a mother are the hands of care for the child who is near and of prayer for the one who is far away. The eyes of a mother are the eyes of fond surprise at baby's first step, the eyes of unspoken worry at the young adult's first voyage from home, the eyes of gladness at every call or visit that says she is honored and remembered. The heart of a mother is a heart that is always full.

Generation after generation has measured love by the work and wonder of motherhood. For these gifts, ever ancient and ever new, we cannot pause too often to give thanks to mothers. As inadequate as our homage may be and as short as a single day is to express it—"What possible comparison was there," a great saint wrote of his mother, "between the honor I showed her and the service she had rendered me?"—Mother's Day affords us an opportunity to meet one of life's happiest duties.

In recognition of the contributions of mothers to their families and to our Nation, the Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as Mother's Day and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby request that Sunday, May 8, 1988, be observed as Mother's Day. I urge all Americans to express their love and respect for their mothers and to reflect on the importance of motherhood to the well-being of our country. I direct government officials to display the flag of the United States on all Federal government buildings, and I urge all citizens to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9646
Filed 4-27-88; 2:34 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12637 of April 27, 1988

Productivity Improvement Program for the Federal Government

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Budget and Accounting Act of 1921, as amended, and in order to further improve a comprehensive program for the improvement of productivity throughout all Executive departments and agencies, it is hereby ordered as follows:

Section 1. There is hereby established a government-wide program to improve the quality, timeliness, and efficiency of services provided by the Federal Government. The goal of the program shall be to improve the quality and timeliness of service to the public and to achieve an annual average productivity increase of 3 percent in appropriate functions. Each Executive department and agency will gradually include appropriate functions in the Productivity Improvement Program, so that by 1991 all appropriate functions are covered.

Sec. 2. As used in this Order, the term:

(a) "Productivity" means the efficiency with which resources are used to produce a government service or product at specified levels of quality and timeliness;

(b) "Appropriate functions" means those agency program functions that produce measurable outputs in the form of services to the public;

(c) "Public" means a customer outside the organization, such as citizens, businesses, State and local governments, other countries and/or their citizens, other agencies, the military;

(d) "Outputs" means products or services delivered to the public;

(e) "Measurement system" means both the specific measures used to determine whether standards of quality, timeliness, and efficiency of services are being met, and the procedures for the collection and reporting of data resulting from application of productivity measures;

(f) "Organizational performance standard" means a statement that quantifies and describes the desired level of quality, timeliness, and efficiency of services to be provided by an organization;

(g) "Management review" means the review by the Director of the Office of Management and Budget, as part of the budget process of agency accomplishments and plans for management and productivity improvements.

Sec. 3. The head of each Executive department and agency shall:

(a) Develop a complete inventory of all appropriate functions to be included in the productivity program, use the agency's planning process to review current functions, and develop agency goals and objectives for improvement in services to the public.

(b) Develop and submit annually to the Office of Management and Budget a productivity plan. Each plan shall conform to the policy guidance issued by the Director of the Office of Management and Budget, pursuant to Section 5 of this Order, and shall:

(1) set forth the agency's productivity goals and objectives;

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 338

Conversion of Cooperative Education Program Students; Restriction on Sons and Daughters

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is publishing final regulations on the use of Schedule B appointing authorities to permit the noncompetitive conversion of qualified Cooperative Education Program (Co-op) students into office and administration support, technician, assistant, helper and preapprentice occupations in the Federal service. These regulations also remove sons and daughters restrictions and use employment of relatives restrictions in their place. These changes will strengthen the Federal service by providing simplified career entry for Co-op students based on their demonstrated performance in study-related work assignments in Federal agencies.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Marsha E. Frost, (202) 632–0496.

SUPPLEMENTARY INFORMATION: The changes effected by this final regulation were published for comment in 53 FR 1789 on January 22, 1988, and distributed for information to Heads of Departments and Independent Establishments by Federal Personnel Manual Bulletin 213–78 dated February 4, 1988. Advance copies were sent to Federal agencies, hundreds of educational institutions and numerous professional associations on January 5, 1988. In the 30-day comment period ending on February 22, 1988, the Office of Personnel Management received 65 comments—43 from Federal agencies; 18 from educational institutions; and 4 from labor unions.

The majority favored and supported the proposed regulatory changes. On the addition of high school and undergraduate certificate appointment authorities under Schedule B 213.3202 (e) and (g), the respondees either had no comment or viewed the regulations as a positive step for the Government toward recruiting eligible Co-op students into civil service jobs. Minor comments were received on editorial changes pertinent to the occupations. These terms are consistent with those used in State vocational education programs and have been added to the final regulations.

Nearly all of the respondees favored or provided no comments on the removal of the "sons and daughters restrictions" for student employment programs covered under Executive Order 12015. Some stated this change was long overdue and added flexibility to the program. Two Federal agencies and one Federal manager requested that "sons and daughters restrictions" be retained. In view of the fact that agencies have the flexibility to apply additional controls they feel are necessary to meet their work situations and the fact that restrictions on the "employment of relatives" under § 310.103 (a), (b), and (c) still apply to student employment programs conducted under E.O. 12015, "sons and daughters restrictions" are removed in the final regulation. Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to provide agencies and educational institutions with maximum flexibility to manage the program and to alleviate administrative and office support shortages.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order (E.O.) 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to appointment procedures for certain employees in Federal agencies.

List of Subjects

5 CFR Part 213

Government employees.

5 CFR Part 338

Government employees, Nepotism, Aged.

Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Parts 213 and 338, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for Part 213 reads as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337 (h) and 8457.

2. In § 213.3102(q), the fourth sentence is revised and the fifth sentence is removed to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(q) * * * No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly relates to a scientific, professional, or technical curriculum—or in excess of 1040 working hours a year. * * *

3. In § 213.3201, paragraph (b) is removed and reserved.

§ 213.3201 Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination.

* * * * *

(b) [Reserved]

4. In § 213.3202, paragraph (e) is revised and paragraph (g) is added to read as follows:

§ 213.3202 Entire executive civil service.

* * * * *

(e) Student positions established in support of the Cooperative Education (Vocational Education) Programs for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high

school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

* * * * *

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper and preapprentice occupations of the Federal career service upon the students' graduation.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

5. The authority citation for Part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

6. In § 338.202, paragraph (d) is removed and reserved.

§ 338.202 Restriction on sons and daughters.

* * * * *

(d) [Reserved]

* * * * *

[FR Doc. 88–9579 Filed 4–28–88; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Part 890

Expanded Enrollment Opportunity Under the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Federal Employees Health Benefits (FEHB) Program regulations to expand the enrollment opportunity that allows Federal employees to enroll or change enrollment when a spouse loses non-Federal health insurance coverage under certain conditions. This revision will (1) permit Federal employees to enroll or change to a family enrollment upon the involuntary loss of non-Federal health insurance coverage by the employee's spouse or by the other parent of the employee's child; and (2) permit annuitants to provide FEHB coverage for family members who lose non-Federal coverage under certain conditions.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 632–4634.

SUPPLEMENTARY INFORMATION: Current FEHB regulations permit Federal employees to enroll in the FEHB Program or to change enrollment from self only to self and family coverage if a non-federally employed spouse loses coverage because of a layoff from his or her employment. On June 12, 1987, OPM published proposed regulations in the **Federal Register** (52 FR 22475) that would (1) change the qualifying event from the non-Federal employee's layoff from employment to his or her involuntary loss of health insurance coverage; (2) enable divorced Federal employees to provide FEHB coverage for their children if the children lose non-Federal coverage under the plan of the employee's former spouse, and (3) extend to annuitants the opportunity to change to a self and family enrollment if the regulation's other conditions are met.

We received written comments from two Federal agencies, a retired Federal employees association, and seventeen individuals. All were generally in favor of the proposed regulations.

Our proposed rule would have expanded the current regulation's enrollment opportunity to include Federal employees whose children lost coverage under the non-Federal plan of a former spouse. Two commenters noted that there are also instances where the Federal employee may have never married the parent of his or her child, but is responsible for the child's support including medical care. Our intent is to ensure that the children of Federal employees will have continuous health insurance coverage, regardless of the marital status of their parents. Therefore, the final regulations will permit enrollment or change if the child loses coverage under the *other parent's* non-Federal plan.

One Federal agency suggested that we further clarify what we mean by the word "involuntary." As stated in our proposed regulations, for purposes of this regulation, an involuntary loss of coverage is one that is not initiated by, or the direct result of an action by, the non-Federal employee. For a loss of coverage to qualify as "involuntary", it must be the result of events which were not of the employee's choosing and over which the employee had no control. In addition to situations where the non-federally employed individual was laid off from his or her employment (as stated in current regulations), this would include situations where the employer terminates health insurance for all employees, reduces the number of hours worked by the employee, thereby making the employee ineligible for health insurance in some situations, goes out of business, or eliminates coverage for dependents. It would *not* include situations where the non-Federal employee cancels his or her insurance, drops coverage for his or her dependents, resigns, or is fired for cause. These examples are not all-inclusive; it is not possible to anticipate every individual circumstance that could occur. We therefore remind agencies that they may contact OPM for an advisory opinion if it is unclear whether a particular situation would qualify as an "involuntary" loss of coverage.

Several other commenters have suggested that we eliminate the "involuntary" requirement specified in our proposed regulations and permit enrollment or change if the non-Federal employee loses coverage for any reason. The primary purpose of our revision is to provide relief for the Federal employee whose spouse (or child's other parent) loses non-Federal coverage involuntarily but does not meet the current regulation's requirement of being "laid off" from his or her employment. Our final rule will accomplish this purpose and we do not believe that reaching beyond this "involuntary" limit would be appropriate.

As stated in our proposed regulations, if the non-Federal employee loses health insurance involuntarily, but elects to temporarily continue the employer provided group insurance under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–272), the "loss of coverage" for purposes of our regulation would occur on the date that the temporary continuation of coverage ends. The Federal employee must register to enroll or change enrollment within the period beginning 31 days before and ending 31 days after that date.

An enrollment or change to a self and family enrollment permitted under this regulation will take effect in accordance with the provisions of 5 CFR 890.306(h), i.e. on the first day of the first pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status.

The final regulations include an editorial change to clarify that if the employee's or annuitant's spouse, or the other parent of the employee's or annuitant's children, involuntarily loses dependent coverage while retaining his or her own coverage, the Federal employee or annuitant will have an opportunity to enroll (employees only) or change to a self and family enrollment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; section 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.301, paragraph (y) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(y) *Loss of coverage under spouse's non-Federal plan*—(1) An employee whose spouse involuntarily loses his or her non-Federal health insurance coverage, or coverage for his or her dependents, may register to enroll within the period beginning 31 days before and ending 31 days after the spouse's or dependent's loss of coverage. An employee whose children lose coverage under the other parent's non-Federal health plan because the other parent involuntarily loses coverage for his or her dependents, may register to enroll within the period beginning 31 days before and ending 31 days after the children's loss of coverage.

(2) An employee or annuitant whose spouse involuntarily loses his or her non-Federal health insurance coverage, or coverage for his or her dependents, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the spouse's or dependent's loss of coverage. An employee or annuitant whose children lose coverage under the other parent's non-Federal health plan because the other parent involuntarily loses coverage for his or her dependents, may change enrollment from self only to self and family within the period beginning 31 days before and ending 31 days after the children's loss of coverage.

* * * * *

[FR Doc. 88-9580 Filed 4-28-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 251

Temporary Emergency Food Assistance Program (TEFAP); Distribution Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Temporary Emergency Food Assistance Program (TEFAP) (7 CFR Part 251). This amendment allows the distribution, subject to certain restrictions, of materials not directly related to participation in or eligibility for TEFAP or other government assistance programs or services. The intent of the rule is to assure that TEFAP participants are not pressured into supporting various political, social or religious points of view in connection with the receipt of TEFAP commodities, and to protect the first amendment right of freedom of speech.

EFFECTIVE DATE: This rule is effective June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center—Room 502, Alexandria, Virginia 22302, Telephone (703) 756-3660.

SUPPLEMENTARY INFORMATION: The information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget (OMB) before becoming effective, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). Current reporting and recordkeeping requirements were approved by OMB under control number 0584-0313.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601-612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the Catalog of Federal Domestic Assistance under 10.568 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and the notice published at 49 FR 22675, May 31, 1984).

Background

On June 8, 1987 (52 FR 21545), the Food and Nutrition Service, USDA, published a proposed rule to prohibit the distribution of materials unrelated to TEFAP or other related government programs at the time of TEFAP commodity distributions. In the preamble to that proposed rule, it was noted that since the beginning of the distribution of surplus commodities to households in December 1981, the Department has learned that local agencies (emergency feeding organizations (EFOs) or the distribution sites under the EFOs) that distribute TEFAP commodities occasionally have used the distribution for purposes beyond simply giving food to those in need. For example, there have been instances in which political literature has been handed out with the commodities, giving the appearance that the candidate sponsored the distribution. Despite the specific prohibition against such activities found in § 251.10(f), the Department has

become aware that some local agencies have continued to distribute various types of fliers, pamphlets, religious messages, and other literature that have no relationship to the distribution of commodities or the availability of other programs targeted to the needy.

The Department is concerned that participants might believe that receipt of the literature is a condition of TEFAP eligibility or that USDA would be seen as endorsing these various causes. The proposed regulations, therefore, were issued to expand the prohibitions against distributing such literature as State referenda and constitutional amendments and materials about political or social causes or religious doctrines.

The Department also proposed a more clearly defined procedure to enforce this prohibition. Previously, whenever a violation was brought to our attention, we asked the State agency in charge of TEFAP distributions to have the violation stopped immediately. However, violations still occurred. To prevent this continued abuse, the Department proposed that local agencies that violate this policy be terminated from further TEFAP distributions unless the State agency can find no other organization in the area to distribute the commodities. If a violating organization is the only one in an area that could administer the program, the State agency would be required to monitor distribution to ensure that no further abuses occurred.

Analysis of Comments

A total of 56 comments were received in response to the proposed rule. Twenty-eight comment letters were from organizations such as the American Civil Liberties Union, the Center for Budget and Policy Priorities, and the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO). Twenty-two State agencies commented. Five local agencies and one Congressman also sent in comments.

By far, the single major concern of commenters centered on the question of whether the proposed rule was consistent with the right to free speech in the first amendment to the Constitution. Although some State agencies felt that the rule as proposed would help them to administer the program more efficiently, most commenters were opposed to the proposed rule's ban on all distribution of materials unrelated to TEFAP. Many commenters stated that organizations and individuals had a right to pass out information in public places.

It was not the Department's intent to infringe upon the right of free speech. Instead, the Department sought to avoid harassment of TEFAP participants and to avoid any implication that the Department endorsed the information being distributed. In this rule, the Department seeks to achieve a balance between the right of free speech under the first amendment and the prevention of both the harassment of TEFAP recipients and the appearance of endorsements by USDA. Accordingly, the Department has revised the language in § 251.10(f) to better reflect this balance. The revision is a shift in the focus of the rule, rather than a substantial change in the results of the rule. The final rule permits activities unrelated to TEFAP, subject to restrictions, whereas the proposed rule prohibited activities unrelated to TEFAP, with some exceptions.

The newly worded § 251.10(f)(1) permits activities unrelated to TEFAP food distribution under the following conditions: (1) That the person(s) conducting the activity makes clear that the activity is not part of TEFAP. Impermissible activities include information not related to TEFAP placed in or printed on TEFAP bags or boxes; (2) that the person(s) conducting the activity makes clear that participants need not cooperate with him or her in order to receive TEFAP foods; and (3) that the activity not interfere with TEFAP distribution.

In the proposed rule, paragraph (f)(1) listed certain materials that could be distributed. The final rule has changed this provision, and made it part of subparagraph (f)(1)(i). This provision now states that materials provided by the Federal, State or local government may be distributed without a statement denying USDA endorsement. The Department is not concerned about being viewed as endorsing the activities of another government agency. In addition, many EFOs give information about various government-sponsored programs to help the needy, and it is not the Department's intent to curtail this service.

Paragraph (f)(2) has also been revised, and paragraph (f)(2) of the proposed rule has been redesignated as paragraph (f)(3) in the final rule. The final version of paragraph (f)(2) requires the EFOs and the distribution sites to enforce the conditions for unrelated activities in order to ensure that the recipients are not harassed and that there are no implications of USDA endorsements, except as authorized by the Department.

Although this enforcement requirement was in the proposed rule, its placement has been changed because of the changes in the language of the rule noted above.

Some commenters expressed a concern that the proposed penalty, that is, terminating a distribution site or EFO from future distribution, may be too severe. However, in evaluating this point, the Department has determined that without the threat of termination, EFOs or distribution sites could violate the provision with impunity. In addition, the participants are protected because the State agency may withhold termination if no other site can be found for the area. In such a case, the State agency must monitor future distributions at that site to ensure compliance with § 251.10(f)(1).

There is a minor change in the violation provision contained in § 251.10(f)(3) of the final rule. The Department has added a requirement that State agencies immediately terminate from further participation in TEFAP operations not only any EFO or distribution site that distributes materials in an unauthorized manner, but also those which permit the distribution of materials in an unauthorized manner. The Department believes that the host organization must ensure that no group or individual violates these provisions in order to make the provisions effective. This change is also consistent with the general requirement of the proposed rule which provided that an EFO or distribution site shall not distribute or *permit* distribution of materials unrelated to TEFAP. Aside from this change, the Department has issued the termination section as proposed.

List of Subjects in 7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 251 is amended as follows:

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM FOR FISCAL YEARS 1986 AND 1987

1. The authority citation for Part 251 continues to read as follows:

Authority: Pub. L. 98–8, as amended (7 U.S.C. 612c note).

2. Section 251.10(f) is revised as follows:

§ 251.10 **Miscellaneous provisions.**

* * * * *

(f) *Limitation on unrelated activities.* (1) Activities unrelated to the distribution of TEFAP foods may be conducted at distribution sites as long as:

(i) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department (impermissible activities include information not related to TEFAP placed in or printed on bags, boxes, or other containers in which commodities are distributed). Recipes or information about commodities, dates of future distributions, hours of operations, or other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(ii) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of TEFAP commodities (cooperation includes contributing money, signing petitions, or conversing with the person(s)); and

(iii) The activity is not conducted in a manner that disrupts the distribution of TEFAP commodities.

(2) Emergency feeding organizations and distribution sites shall ensure that activities unrelated to the distribution of TEFAP foods are conducted in a manner consistent with paragraph (f)(1) of this section.

(3) *Termination for violation.* Except as provided in paragraph (f)(4) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any emergency feeding organization or distribution site that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (f)(1) of this section.

(4) *Termination exception.* The State agency may withhold termination of an emergency feeding organization's or distribution site's TEFAP participation if the State agency cannot find another emergency feeding organization or distribution site to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the distribution of commodities by the violating organization to ensure that no further violations occur.

Date: April 24, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-9486 Filed 4-28-88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-131]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by removing language authorizing states to enforce safeguards other than those contained in federal regulations concerning the entry of fruits and vegetables into the United States for local consumption. This deletion is necessary because states are precluded from imposing requirements on fruits and vegetables while they are in foreign commerce.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 670, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8248.

SUPPLEMENTARY INFORMATION:

Background

"Subpart—Fruit and Vegetables," contained in 7 CFR 319.56 *et seq.* (referred to below as the regulations), prohibits or restricts the importation of certain fruits and vegetables as a means of preventing the spread of foreign plant pests to the United States. The regulations provide for the following conditions of importation: certification, movement under permit, inspections, and treatment. These conditions are based on the pest hazard of the fruit and vegetables involved, the pests known to exist in the country or location of origin, and other circumstances appropriate to the specific intended movement.

On July 23, 1987, we published a document in the **Federal Register** (52 FR 27686-27687, Docket No. 86-366) proposing to amend the regulations by removing language stating that the subpart's requirements "shall not be a bar to the enforcement of such additional safeguards as may be deemed necessary by the officials of such states". Our concern is that this language could be interpreted as authorizing states to regulate the importation of foreign fruits and vegetables into the United States. Any such action by a state would be inconsistent with the separation of federal and state powers mandated in the United States Constitution, which precludes the states from regulating foreign commerce.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before September 21, 1987. We received eight comments.

Foreign-to-Intrastate Commerce

Seven commenters argued that "additional [state] safeguards" are enforced after foreign commerce in imported fruit and vegetables ceases and, therefore, are not precluded by the Constitution. The commenters disagree, however, as to exactly when the foreign commerce concerning fruit and vegetables ceases. The differing opinions offered by the commenters included:

1. After inspection and clearance by our inspectors at a U.S. port of entry.
2. When foreign fruits and vegetables are moved into a state for distribution within that state.
3. When title is transferred to the receiver.

Most of the commenters (many of whom were state officials) err in their opinion of when the foreign commerce ceases concerning fruit and vegetables. The foreign commerce does not cease after inspection and clearance by Animal and Plant Health Inspection Service inspectors at a United States port of entry, or when they are moved into a state for distribution within that state. The foreign commerce often does not cease when "title is transferred to the receiver." Fruit and vegetables are generally perishable commodities which are imported for immediate distribution and sale to the consuming public, and the foreign commerce in imported fruit and vegetables would generally not cease until sold to the ultimate consumer. The question of when the foreign commerce ceases must be considered on a case-by-case basis.

Insufficient or Nonexistent Regulations

Five commenters expressed a common belief that states should have the right to protect their citizens and industries from pests of foreign origin when federal regulations are insufficient or do not exist.

We disagree. State officials who believe that their state is not adequately protected by existing federal regulations may petition the Animal and Plant Health Inspection Service to have the regulations changed. In fact, the Animal and Plant Health Inspection Service already cooperates with a variety of organizations—such as the National Association of State Departments of Agriculture and the National Plant

Board—that routinely evaluate federal plant protection laws and regulations, offering periodic recommendations to improve federal protections against foreign plant pests.

No Past Problems

Three commenters argued that since there is no evidence that the "additional safeguards" language has caused any problems, there is no need to amend the regulations. We disagree. A lack of problems in the past does not guarantee that states will not be misled into an unconstitutional regulation of foreign commerce in the future. It is clear from comments received concerning this rule that there is a problem concerning "additional safeguards" by states. It is not known if the current "additional safeguards" language has caused or contributed to that problem. However, the potential for misinterpreting the current "additional safeguards" language can only be alleviated by removing it from the regulations.

Increase/Decrease Authority

Two commenters felt that our proposed amendment would increase federal authority at the expense of the states, by eliminating the latter's inspection systems and regulatory actions. In fact, this amendment is a completely neutral action in that it neither increases nor decreases federal and state authorities.

We are deleting a statement from the current regulations that could be misinterpreted as authorizing state regulation of foreign commerce. This amendment does not take any existing authorities away from the states, because the Constitution precludes state regulation of foreign commerce.

New Language

Two commenters recommended retention of a clarified "additional [state] safeguards" statement in the regulations. They also suggested that the clarification be accomplished by replacing the current language with the following:

> Provided, that the requirements under the regulations in this subpart with respect to the entry of foreign fruits and vegetables into any state for local consumption shall not be a bar to the enforcement of such additional post-clearance and post-entry safeguards as may be deemed necessary by the officials of such states.

Unfortunately, both comments were based on the erroneous belief that imported fruit and vegetables transfer from foreign commerce to domestic commerce immediately following inspection and clearance at a United States port of entry. As previously explained (see discussion under subtitle, *Foreign-to-Intrastate Commerce*), imported articles remain in foreign commerce after inspection and clearance at a United States port of entry. Thus, the phrase suggested by the commenters, "post-clearance and post-entry," could be interpreted as authorizing state regulation of foreign commerce.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Deletion of the language in § 319.56–6(c) will make it clear that states may not regulate fruits and vegetables in foreign commerce. Deletion of this language will not add, remove, or alter any requirements or provisions under Part 319. Current enforcement practices will remain intact.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

Ths program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR Part 319 is amended to read as follows:

1. The authority citation for Part 319 continues to read as follows:

> **Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c.)

§ 319.56–6 [Amended]

2. In paragraph (c) of § 319.56–6, the phrase *"Provided,* That the requirements under the regulations in this subpart with respect to the entry of foreign fruits and vegetables into any State for local consumption shall not be a bar to the enforcement of such additional safeguards as may be deemed necessary by the officials of such States." is removed.

Done in Washington, DC, this 26th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–9559 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of April through August 1988 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa milk order. The limits would be revised temporarily from 50 percent to 65 percent. The revision is made in response to a request by a cooperative association representing producers supplying the market, and will prevent uneconomic movements of milk.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of

Diversion Limitation Percentages: Issued March 21, 1988; published March 24, 1988 (53 FR 9636).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (53 FR 9636) concerning a proposed relaxation of the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The temporary revision would be effective for the months of April through August 1988. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by March 31, 1988.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the diversion limits on producer milk should be increased by 15 percentage points, from 50 percent to 65 percent.

Pursuant to the provisions of § 1065.13(d), the Director of the Dairy Division may increase or decrease the diversion limitation percentages by up to 20 percentage points in any month. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The diversion limitations of the Nebraska-Western Iowa milk order were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, and from 50 to 60 percent for the months of July and August 1987.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1988, the diversion limit on producer milk be increased by 15 percentage points.

The cooperative stated that producer milk used in Class I sales under the Nebraska-Western Iowa order during January 1988 declined to 35 percent from a January 1987 level of 42 percent. During the same time period, according to NFO, the amount of producer milk pooled under the order increased 13 percent. The cooperative predicted that this pattern of increasing production and the resulting decline in the percentage of producer milk used in Class I is likely to continue in 1988. NFO stated that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III usage is quite appropriate.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk must be unloaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO stated that without the temporary revision such uneconomic milk shipments will be necessary for the months of April through August 1988 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Comments supporting the temporary revision of the diversion limitations were received from Associated Milk Producers, Inc. (AMPI), a cooperative association also representing producers on the Nebraska-Western Iowa market. AMPI supported the temporary revision of the order's diversion limits for the same reasons cited by NFO. The cooperative emphasized that an increase of diversion limits, to allow more milk to be shipped directly to manufacturing plants, is the most economical solution to the problem of decreased Class I utilization and increased supplies of producer milk.

No comments opposing the proposed relaxation of the Nebraska-Western Iowa order's diversion limits were received.

Without the temporary revision, milk would have to be moved unnecessarily and uneconomically from farms to pool plants for the sole purpose of maintaining the pool status of producers historically pooled under the Nebraska-Western Iowa order. In addition to such movements of milk being inefficient and uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded the relaxation of the producer milk diversion limit by 15 points will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of April through August 1988;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1065.13(d) (2) and (3) of the Nebraska-Western Iowa milk order are hereby revised for the months of April through August 1988.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1065.13 [Temporarily revised in part]

2. In § 1065.13(d) (2) and (3), the provision "50 percent" is revised to "65 percent" for the months of April through August 1988.

Signed at Washington, DC, on April 25, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88-9528 Filed 4-28-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 611]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 611 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period May 1 through May 7, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES Regulation 611 (§ 910.911) is effective for the period May 1 through May 7, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on April 26, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8–4 vote, a quantity of lemons deemed advisable to be handled during the specified week. The commitee reports that the market for lemons remains good for larger sizes, weaker for smaller sizes.

Pursuant to 5 U.S.C. 553, it is further found that is it impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.911 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.911 Lemon Regulation 611.

The quantity of lemons grown in California and Arizona which may be handled during the period May 1, 1988, through May 7, 1988, is established at 340,000 cartons.

Dated: April 27, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-9648 Filed 4-28-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-141-AD; Amdt. 39-5903]

Airworthiness Directives; Lockheed-Georgia Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to Lockheed Model 382 series airplanes, which requires inspection of the control column base for cracks, and replacement, if necessary. This amendment is prompted by reports of operators using an elevator block that has caused cracking to occur in the First Officer's control column. This condition, if not corrected, could result in failure of the control column and loss of control of the airplane.

DATES: Effective June 7, 1988.

ADDRESSES: Applicable service information may be obtained from Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Aerospace Engineer, Airframe Branch (ACE-120A), FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix

Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991–2910.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Lockheed-Georgia Model 382 series airplanes, which requires inspection of the control column base for cracks, and replacement, if necessary, was published in the **Federal Register** on December 28, 1987 (52 FR 48829).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the following rule.

It is estimated that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($400). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-Georgia: Applies to Model 382 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the control column and loss of control of the airplane, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, perform an eddy current (non-destructive) inspection of the left and right control column bases on the forward side of each control column at approximately floor level, as follows:

Note: The control column base is shown in the Lockheed Hercules Component Overhaul Manual, SMP 850, Item 27–26, Figure 1, page 4, as Figure Item No. 235 (see Figure 1, below). The inspection area is around the 1.25-inch diameter hole located on the forward side of the base approximately at the lower end of the control column tube support (Figure Item No. 185).

The control column bases are fabricated from either magnesium or aluminum. Earlier airplanes were delivered with AZ916–T6 magnesium alloy sand castings per MIL–M–4204. The magnesium castings are finished with an anodic treatment, a wash primer per MIL–C–8514, and two coats of epoxy primer per LAC 37–722, Type I, followed by an epoxy enamel per LAC 37–722 of appropriate color. The aluminum bases are A356–T6 aluminum castings per MIL–A–21180, Class 10, with an initial sulfuric acid anodize, and finished with two coats of zinc chromate primer, followed by two coats of Camouflage lacquer per TT–L–190.

Fatigue cracking may initiate at the sharp edge formed by thickness transition approximately mid-way up from the bottom of the 1.25-inch diameter hole on the forward side of the base. Cracks will propagate aft around the perimeter of the base along the thickness transition.

1. Prior to performing the eddy current inspection, assemble the following equipment:

a. Crack Detector, Magnaflux P/N ED–520, or equivalent.

b. Probe, surface, shielded, ⅛-inch diameter, 8 inches long, VM products P/N VM200–8, or equivalent.

c. Probe, surface, shielded, right angle, ⅛-inch diameter, ½-inch drop, 8 inches long, VM Products P/N VH202BA–½–8, or equivalent.

d. Cable, 6 foot, Microdot/BAC, Mastercraft Enterprises P/N NMT 7–41–BM, or equivalent.

e. Standard, aluminum, as furnished with the Magnaflux instrument, or Lockheed-Georgia Company P/N PDL 457A.

2. Prior to performing the eddy current inspection, prepare the airplane in the following manner:

Warning: Ensure that power is isolated from all systems in the inspection area prior to approaching the inspection area. Failure to comply may result in serious injury to personnel.

a. Isolate power from all systems in the inspection area in accordance with applicable maintenance manuals.

b. Remove screws retaining Dust Seal Boot (Figure Item No. 20, Item 27–26 of SMP 850) to the cockpit floor. Loosen clamp retaining the Dust Seal Boot to the Support Tube, and push the Dust Seal Boot up approximately 6–8 inches and secure to Support Tube temporarily. Repeat for opposite control column installation.

3. Gain access for the inspection inside of the airplane in the cockpit, using normal ingress provisions.

4. Prepare the area to be inspected as follows:

a. Remove oil grease, residual, sealant, and other materials by wiping the control column base around the 1.25-inch diameter hole on the forward side of the base with Federal Specification 0–T–620, Type I, Trichloroethane, or commercial equivalent, and dry with clean cotton cloth.

Warning: Federal Specification 0–T–620, Type I, Trichloroethane is toxic to skin, eyes, and respiratory tract. Skin and eye protection is required. Avoid repeated or prolonged contact. Good general ventilation is normally adequate. Failure to comply could result in injury to personnel.

b. Visually inspect area to be inspected, looking for rough surface conditions which could adversely affect the eddy current inspection. If surface appears rough, smooth surface using 320 grit sandpaper until a reliable eddy current inspection can be achieved.

5. Set up and calibrate the eddy current instrument as specified in Lockheed Service Manual SMP–515–A or SMP–515–C, Work Card SP–76, Appendix A, for surface scanning on aluminum. The eddy current instrument must be recalibrated when probes are changed. Calibrate on aluminum for inspection of the magnesium casting.

6. Perform the eddy current inspection in the following manner:

a. With the control column in the full aft position, surface scan around the entire circumference of the 1.25-inch diameter hole at the front of the control column base casting, using both eddy current probes. Scan in both clockwise and counterclockwise directions.

b. Repeat this inspection on the opposite control column base.

7. If any suspected defects in the control column base casting are found during the eddy current inspection, indicated by a sharp meter deflection noted during calibration, mark the suspected defect.

a. To confirm suspected defects, proceed to paragraph B., below.

b. If no defects are suspected, proceed to paragraph C., below (System Securing).

B. To confirm suspected defects, perform a fluorescent penetrant inspection as follows:

1. Prior to performing the fluorescent penetrant inspection, assemble the following equipment:

Note: All chemicals shall use the "family concept"—they shall all be from the same manufacturer for Type I, Group VI, Method C, per MIL–I–25135.

a. Penetrant, fluorescent, Magnaflux P/N ZL–22A, or equivalent.

b. Remover, penetrant, Magnaflux P/N SKC/NF/ZC–7B, or equivalent.

c. Developer, penetrant, Magnaflux P/N ZP-9b, or equivalent.

d. Black light, portable, Magnaflux P/N ZB-26, or equivalent.

2. Prior to performing the fluorescent penetrant inspection, prepare the airplane by removing the control column assembly from the airplane in accordance with the applicable maintenance document.

3. Gain access for the inspection inside of the airplane in the cockpit, using normal ingress provisions.

4. Prepare the area to be inspected, in accordance with Lockheed Service Manual SMP 515-A or SMP 515-C, Work Card SP-76, Appendix A, for stripping finish around the 1.25-inch diameter hole in the suspect area.

Warning: Paint strippers are dangerous chemicals to humans and aircraft. Every effort must be made to prevent inadvertent contact with any portion of the person or aircraft. Should accidental contact be made, immediately flood the contacted area with water, and, in the case of personal contact, seek immediate medical attention.

5. Perform the fluorescent penetrant inspection in the following manner:

Note: If the temperature of the part or inspection materials to be used is below 60 °F (16 °C), preheat and maintain the temperature at or above 60 °F (16 °C) during application of penetrant materials. The surface may be heated with a hot air heater.

a. Pre-clean the area to be inspected with the solvent cleaner (Remover, SKC/NF/ZC-7B) and wipe with a clean, dry, lint free cotton cloth.

b. Apply warm air to the inspection area to remove all moisture.

c. Apply penetrant to the control column base with penetrant sprayed onto a cotton swab and brushed onto the part. Do not spray the part from the penetrant spray can. Allow a minimum dwell time of 10 minutes before proceeding to the next step.

d. Wipe inspection area with a clean, dry, lint free cotton cloth. Wipe remaining penetrant from part with a clean, lint free cotton cloth dampened with the penetrant remover. Check the area to be inspected with the black light to ensure that excess penetrant has been removed prior to applying the developer.

e. Spray a light film of developer over the area to be inspected. Allow a minimum dwell time of 5 minutes.

f. Using the black light, inspect the suspect area for defects.

6. If defects are confirmed, prior to further flight replace the control column base with a serviceable unit free of cracks. After replacement of the control column base, or if no defects are found, proceed to paragraph C., below (System Securing).

C. System Securing: Restore finishes and sealants, reinstall removed components, remove equipment and supplies from the inspection area; rig control system in accordance with applicable maintenance manual; and perform operation checkouts as required in accordance with applicable maintenance instructions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed-Georgia Company, 86 South Cobb Drive, Marietta, Georgia 30063. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

This amendment becomes effective June 7, 1988.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9482 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-166-AD; Amdt. 39-5907]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires inspections for cracks of each main landing gear (MLG) wheel, and replacement, if necessary. This amendment is prompted by reports of cracks on inboard wheel halves. This condition, if not corrected, could lead to complete failure of the wheel.

DATES: Effective June 10, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Aerospatiale Model ATR-42 series airplanes, which requires inspections for cracks of each main landing gear (MLG) wheel, and replacement, if necessary, was published in the **Federal Register** on January 28, 1988 (53 FR 2500).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters suggested that inspections should be based on a number of landings rather than a specific number of days, since the utilization of their aircraft can vary from 2 landings to as many as 20 landings per day. The FAA concurs with these comments and has revised the final rule to reflect that the inspections are required at intervals of 7 days or 100 landings, whichever occurs later.

Another commenter took notice that the proposed rule would allow only one landing after the detection of a crack, while Loral System Service Bulletin ATR 42-32-40-1 states that a maximum of 5 landings may be made. The commenter suggested that the final rule be revised to be consistent with this aspect of the service bulletin. The FAA does not concur. The FAA has determined that, in order to maintain an acceptable level of safety, no more than one landing may be made after the detection of a crack.

Since issuance of the Notice of Proposed Rulemaking, Aerospatiale has issued Service Bulletin ATR42-32-0017, dated January 19, 1988, which describes procedures for the installation of new reinforced inboard wheel halves and a modified hub spacer. The FAA has determined that installation of the new wheel and hub spacer terminates the requirement for repetitive inspections required by this AD, and has added a new paragraph C. to the final rule to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously discussed.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD

to U.S. operators is estimated to be $5,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 2291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($280). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42 series airplanes, certificated in any category. Compliance required within 7 days or 100 landings after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent failure of the wheel, due to cracked spokes, accomplish the following:

A. With the airplane jacked, perform a visual inspection of the inboard wheel halves for cracks, in accordance with Loral Systems Group Service Bulletin ATR 42–32–40–1, Revision 2, dated June 23, 1987. Repeat the inspection at intervals not to exceed 7 days or 100 landings, whichever occurs later. If a crack is detected, only one additional landing may be made after the detection of a crack before the cracked inboard wheel half must be replaced.

B. At each tire change, perform an eddy current inspection or other nondestructive test of the inboard wheel halves, in accordance with Loral Systems Group Service Bulletin ATR 42–32–40–1, Revision 2, dated June 23, 1987. Replace any cracked inboard wheel half before further flight.

C. Replacement of inboard wheel halves with a new reinforced half wheel and replacement of the existing hub spacer with a modified hub spacer, in accordance with Aerospatiale Service Bulletin ATR42–32–0017, dated January 19, 1988 (reference Loral Service Bulletin ATR42–32–40–4, dated July 15, 1987), constitutes terminating action for the repetitive inspections required by paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on April 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–9537 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–170–AD; Amdt. 39–5908]

Airworthiness Directives; The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC–8–100 series airplanes, which requires clearly marking the location and means of entering the lavatory. This amendment is prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. This condition, if not corrected, could lead to inadvertent opening of the airstair door and consequent depressurization of the airplane.

DATE: Effective June 10, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Systems and Equipment Branch (ANE–173), New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires clearly marking the location and means of entering the lavatory on de Havilland Model DHC–8–100 series airplanes, was published in the **Federal Register** on January 19, 1988 (53 FR 374).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the manufacturer, had no objection to the intent of the AD, but disagreed with the wording of the description of the unsafe condition addressed by this action. The commenter stated that the exit door handle and the lavatory door handle are not in close proximity, as was indicated in the preamble to the Notice. The commenter pointed out that the exit door handle is near the airstair door, while the lavatory door, which does not have a handle, is near the flight compartment entrance. In addition, the commenter believes that the reported incidents of passengers mistaking the airstair door operating handle as the means of gaining access to the lavatory were due to a lack of association of the airstair door handle with the airstair. The FAA considers these comments to have merit. Both the lavatory door and airstair door are located in the forward

portion of the airplane; the lavatory door (which does not have a handle) is located on the right-hand side, around a corner from the airstair door. The FAA notes that passengers' confusion apparently arises from a label located next to the airstair door handle, which merely reads "OPEN," and does not distinguish between the airstair or lavatory. In consideration of the foregoing, the FAA has revised the text of the final rule to clarify the description of the unsafe condition.

The same commenter stated that a statement in the preamble to the Notice, which read "* * * the exit door was inadvertently opened," was not completely accurate. In two of the reported incidents, the airstair door handle was moved sufficiently to deflate the door seal, but the door was not actually opened. In another incident, a passenger apparently grabbed the airstair door handle in an attempt to gain access to the lavatory, but was stopped by an on-board flight attendant; in this case, the door seal did not deflate and the door was not opened. The FAA notes these comments.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the change previously described.

It is estimated that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately .5 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $720.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of a minimal cost of compliance per airplane ($20). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to Model DHC–8–100 series airplanes, serial numbers 3 and subsequent, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent depressurization caused by passengers mistaking the airstair door operating handle for a means of gaining access to the lavatory, accomplish the following:

A. Within 60 days after the effective date of this AD, replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8–11–14, Revision A, dated July 20, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England, Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective June 10, 1988.

Issued in Seattle, Washington, on April 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–9536 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 25593; Amdt. No. 343]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective:* May 15, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before

the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on April 15, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 343 EFFECTIVE DATE, MAY 5, 1988

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
BAHAMA ROUTES		
65V IS AMENDED TO READ IN PART		
*SYDNY, BF FIX *4000 - MRA **1200 - MOCA	LAUTH, BF FIX	**3000
LAUTH, BF FIX *1400 - MOCA	FREEPORT, BF VOR/DME	*2000
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
MODENA, PA VORTAC	BIGGY, PA FIX	2500
BIGGY, PA FIX	SOLBERG, NJ VORTAC	2000
§95.6013 VOR FEDERAL AIRWAY 13		
IS AMENDED TO READ IN PART		
RICH MOUNTAIN, OK VORTAC *4200 - MRA **3900 - MOCA	*HADES, AR FIX	**4600
DES MOINES, IA VORTAC *3500 - MCA ANKEN FIX, N BND	*ANKEN, IA FIX	2700
§95.6015 VOR FEDERAL AIRWAY 15		
IS AMENDED TO READ IN PART		
ARDMORE, OK VORTAC	PHARA, OK FIX	3000
PHARA, OK FIX *2300 - MOCA	OKMULGEE, OK VOR	*3000
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
CALVERTON, NY VORTAC	CREAM, NY FIX	2000
CREAM, NY FIX	NORWICH, CT VORTAC	2500
§95.6020 VOR FEDERAL AIRWAY 20		
IS AMENDED TO READ IN PART		
LATEX, TX FIX *1700 - MOCA	ASCOT, TX FIX	*4000
SOLON, TX FIX	CORPUS CHRISTI, TX VORTAC	1600
NEW ORLEANS, LA VORTAC *1500 - MOCA	SLIDD, LA FIX	*5000
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED TO READ IN PART		
RIMBA, NY FIX	WEETS, NY FIX	6000
§95.6039 VOR FEDERAL AIRWAY 39		
IS AMENDED TO READ IN PART		
GORDONSVILLE, VA VORTAC *5200 - MOCA	MARTINSBURG, WV VORTAC	*6000
§95.6049 VOR FEDERAL AIRWAY 49		
IS AMENDED TO READ IN PART		
VULCAN, AL VORTAC *4000 - MRA	*BOUNT, AL FIX	3000
§95.6066 VOR FEDERAL AIRWAY 66		
IS AMENDED TO READ IN PART		
TUCSON, AZ VORTAC	SULLI, AZ FIX	8000
SULLI, AZ FIX	MESCA, AZ FIX SE BND NW BND	9500 8000
MESCA, AZ FIX	DOUGLAS, AZ VORTAC	9500
DOUGLAS, AZ VORTAC *8700 - MOCA	ANIMA, NM FIX	*11000
EL PASO, TX VORTAC	HUDSPETH, TX VORTAC	7500
ABILENE, TX VORTAC *3500 - MOCA	BRIDGEPORT, TX VORTAC	*5000
TUSCALOOSA, AL VORTAC *2000 - MOCA	BROOKWOOD, AL VORTAC	*2500
§95.6067 VOR FEDERAL AIRWAY 67		
IS AMENDED TO READ IN PART		
BURLINGTON, IA VORTAC	IOWA CITY, IA VORTAC	2600
IOWA CITY, IA VORTAC	CEDAR RAPIDS, IA VORTAC	2700
§95.6088 VOR FEDERAL AIRWAY 88		
IS AMENDED TO READ IN PART		
DELMA, MO FIX *2300 - MOCA	GLASS, MO FIX	*3500
§95.6114 VOR FEDERAL AIRWAY 114		
IS AMENDED TO READ IN PART		
NEW ORLEANS, LA VORTAC *1500 - MOCA	SLIDD, LA FIX	*5000

FROM	TO	MEA
§95.6126 VOR FEDERAL AIRWAY 126 IS AMENDED TO READ IN PART		
PLANT, IN FIX	NOMES, IN FIX	2600
§95.6130 VOR FEDERAL AIRWAY 130 IS AMENDED TO READ IN PART		
BRADLEY, CT VORTAC	NORWICH, CT VORTAC	6000
§95.6135 VOR FEDERAL AIRWAY 135 IS AMENDED TO READ IN PART		
BARD, AZ VORTAC *3900 - MOCA	BLYTHE, CA VORTAC	*5000
BLYTHE, CA VORTAC	PARKER, CA VORTAC	5400
§95.6137 VOR FEDERAL AIRWAY 137 IS AMENDED TO READ IN PART		
IMPERIAL, CA VORTAC *4500 - MRA	*BRAWL, CA FIX	3000
BRAWL, CA FIX *4000 - MCA WISTE FIX, NW BND	*WISTE, CA FIX	3000
WISTE, CA FIX	THERMAL, CA VORTAC	5000
§95.6138 VOR FEDERAL AIRWAY 138 IS AMENDED TO READ IN PART		
LINCOLN, NE VORTAC	OMAHA, NE VORTAC	3700
§95.6139 VOR FEDERAL AIRWAY 139 IS AMENDED TO READ IN PART		
INNDY, RI FIX	TONNI, MA FIX	2000
§95.6151 VOR FEDERAL AIRWAY 151 IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *1500 - MOCA	GAILS, MA FIX	*3000
GAILS, MA FIX *1500 - MOCA	PROVIDENCE, RI VORTAC	*2000
§95.6155 VOR FEDERAL AIRWAY 155 IS AMENDED TO READ IN PART		
FLAT ROCK, VA VORTAC	COATT, VA FIX	2000
COATT, VA FIX	BROOKE, VA VORTAC	8000
§95.6159 VOR FEDERAL AIRWAY 159 IS AMENDED TO READ IN PART		
NAPOLEON, MO VORTAC	PLASH, MO FIX	2900

FROM	TO	MEA
§95.6161 VOR FEDERAL AIRWAY 161 IS AMENDED TO READ IN PART		
PHARA, OK FIX *2300 - MOCA	OKMULGEE, OK VOR	*3000
BUTLER, MO VORTAC *2400 - MOCA	NAPOLEON, MO VORTAC	*2900
DES MOINES, IA VORTAC *3500 - MCA ANKEN FIX, N BND	*ANKEN, IA FIX	2700
§95.6166 VOR FEDERAL AIRWAY 166 IS AMENDED TO READ IN PART		
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2000 MAA- 8000
§95.6172 VOR FEDERAL AIRWAY 172 IS AMENDED TO READ IN PART		
NEWTON, IA VOR/DME	CEDAR RAPIDS, IA VORTAC	2800
§95.6175 VOR FEDERAL AIRWAY 175 IS AMENDED TO READ IN PART		
LINDE, IA FIX *5500 - MRA **2900 - MOCA	*MADUP, IA FIX	**4000
MADUP, IA FIX *2900 - MOCA	SIOUX CITY, IA VORTAC	*4000
§95.6202 VOR FEDERAL AIRWAY 202 IS AMENDED TO READ IN PART		
TUCSON, AZ VORTAC	SULLI, AZ FIX	8000
SULLI, AZ FIX	MESCA, AZ FIX SE BND NW BND	 9500 8000
§95.6205 VOR FEDERAL AIRWAY 205 IS AMENDED TO READ IN PART		
BRADLEY, CT VORTAC	PUTNAM, CT VOR/DME	6000
§95.6216 VOR FEDERAL AIRWAY 216 IS AMENDED TO READ IN PART		
PAWNEE CITY, NE VORTAC	LAMONI, IA VORTAC	3400
§95.6219 VOR FEDERAL AIRWAY 219 IS AMENDED TO READ IN PART		
SIOUX CITY, IA VORTAC *3200 - MOCA	KILEY, IA FIX	*4500

FROM	TO	MEA
§95.6219 VOR FEDERAL AIRWAY 219—Continued		
EVERT, IA FIX *6800 - MRA **3200 - MOCA	*GRUVE, IA FIX	**4500
§95.6234 VOR FEDERAL AIRWAY 234		
IS AMENDED TO READ IN PART		
DELMA, MO FIX *2300 - MOCA	GLASS, MO FIX	*3500
§95.6245 VOR FEDERAL AIRWAY 245		
IS AMENDED TO READ IN PART		
MINIM, AL FIX	TUSCALOOSA, AL VORTAC	2400
§95.6249 VOR FEDERAL AIRWAY 249		
IS AMENDED TO READ IN PART		
RIMBA, NY FIX	DE LANCEY, NY VOR	5500
§95.6260 VOR FEDERAL AIRWAY 260		
IS AMENDED TO READ IN PART		
FRANKLIN, VA VORTAC	COFIELD, NC VORTAC	1800
§95.6266 VOR FEDERAL AIRWAY 266		
IS AMENDED TO READ IN PART		
FRANKLIN, VA VORTAC *5000 - MCA SUNNS FIX, SE BND **1500 - MOCA	*SUNNS, NC FIX	**2000
§95.6273 VOR FEDERAL AIRWAY 273		
IS AMENDED TO READ IN PART		
HUGUENOT, NY VORTAC	HANCOCK, NY VORTAC	4000
§95.6297 VOR FEDERAL AIRWAY 297		
IS AMENDED TO READ IN PART		
RONDO, MI FIX *4700 - MRA	*WOLIT, MI FIX	3000

FROM	TO	MEA
§95.6340 VOR FEDERAL AIRWAY 340		
IS AMENDED BY ADDING		
PLANT, IN FIX KNOX, IN VORTAC	KNOX, IN VORTAC FORT WAYNE IN VORTAC	2600 3000
IS AMENDED TO READ		
FORT WAYNE, IN VORTAC	RICHMOND, IN VORTAC	3000
§95.6403 VOR FEDERAL AIRWAY 403		
IS AMENDED TO READ IN PART		
BELAY, MD FIX *2000 - MOCA	BUCKS, PA FIX	*6000
§95.6405 VOR FEDERAL AIRWAY 405		
IS AMENDED TO READ IN PART		
BELAY, MD FIX *2000 - MOCA	BUCKS, PA FIX	*6000
PAWLING, NY VORTAC *3500 - MOCA	VEERS, CT FIX	*4000
VEERS, CT FIX *3500 - MOCA	BRADLEY, CT VORTAC	*7000
BRADLEY, CT VORTAC	PROVIDENCE, RI VORTAC	6000
§95.6433 VOR FEDERAL AIRWAY 433		
IS AMENDED TO READ IN PART		
NOTTINGHAM, MD VORTAC	SWANN, MD FIX	2500
SWANN, MD FIX *1400 - MOCA	KERNO, MD FIX	*2500
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
RIMBA, NY FIX	DE LANCEY, NY VOR	5500
LYSAN, NY FIX	DINES, NY FIX	2300
DINES, NY FIX	ROCHESTER, NY VORTAC	6000
§95.6484 VOR FEDERAL AIRWAY 484		
IS AMENDED TO READ IN PART		
GRAND JUNCTION, CO VORTAC	BATTZ, CO FIX	12300
BATTZ, CO FIX	BLUE MESA, CO VORTAC	14000
§95.6510 VOR FEDERAL AIRWAY 510		
IS AMENDED TO DELETE		
DELLS, WI VORTAC	OSHKOSH, WI VORTAC	2900

FROM	TO	MEA	MAA
§95.7024 JET ROUTE NO. 24			
	IS AMENDED TO READ IN PART		
CHARLESTON, WV VORTAC	MONTEBELLO, VA VOR/DME	18000	41000
§95.7030 JET ROUTE NO. 30			
	IS AMENDED TO READ IN PART		
APPLETON, OH VORTAC	BUCKO, WV FIX	18000	45000
BUCKO, WV FIX	KESSEL, WV VOR/DME	18000	29000
§95.7034 JET ROUTE NO. 34			
	IS AMENDED TO READ IN PART		
BELLAIRE, OH VORTAC	BUCKO, WV FIX	18000	45000
BUCKO, WV FIX	KESSEL, WV VOR/DME	18000	29000
§95.7037 JET ROUTE NO. 37			
	IS AMENDED TO READ IN PART		
GORDONSVILLE, VA VORTAC	BROOKE, VA VORTAC	18000	31000
BROOKE, VA VORTAC	VILLS, NJ FIX	18000	31000
VILLS, NJ FIX	COYLE, NJ VORTAC	18000	45000
§95.7048 JET ROUTE NO. 48			
	IS AMENDED TO READ IN PART		
MONTEBELLO, VA VOR/DME	CASANOVA, VA VORTAC	18000	41000
§95.7055 JET ROUTE NO. 55			
	IS AMENDED TO READ IN PART		
HOPEWELL, VA VORTAC	HUBBS, MD FIX	18000	20000
§95.7134 JET ROUTE NO. 134			
	IS AMENDED TO READ IN PART		
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	18000	45000
§95.7191 JET ROUTE NO. 191			
	IS AMENDED TO READ IN PART		
HOPEWELL, VA VORTAC	HUBBS, MD FIX	18000	20000

FROM	TO	MEA	MAA
§95.7191 JET ROUTE NO. 191—Continued			
HUBBS, MD FIX	PATUXENT, MD VORTAC	18000	45000
KENTON, DE VORTAC	DAVYS, NJ FIX	18000	33000
DAVYS, NJ FIX	ROBBINSVILLE, NJ VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-16		
	IS AMENDED TO DELETE		
COYLE, NJ VORTAC	KENNEDY, NY VORTAC	35	COYLE
	V-44		
	IS AMENDED TO DELETE		
MARTINSBURG, WV VORTAC	BALTIMORE, MD VORTAC	31	MARTINSBURG
	V-130		
	IS AMENDED BY ADDING		
BRADLEY, CT VORTAC	NORWICH, CT VORTAC	10	BRADLEY
	V-205		
	IS AMENDED BY ADDING		
BRADLEY, CT VORTAC	PUTNAM, CT VOR/DME	10	BRADLEY
	V-405		
	IS AMENDED BY ADDING		
BRADLEY, CT VORTAC	PROVIDENCE, RI VORTAC	10	BRADLEY

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-24		
	IS AMENDED BY ADDING		
CHARLESTON, WV VORTAC	MONTEBELLO, VA VOR/DME	104	CHARLESTON
	J-48		
	IS AMENDED BY ADDING		
MONTEBELLO, VA VOR/DME	CASANOVA, VA VORTAC	16	MONTEBELLO
	J-134		
	IS AMENDED BY ADDING		
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	133	HENDERSON
	J-191		
	IS AMENDED TO DELETE		
HOPEWELL, VA VORTAC	PATUXENT, MD VORTAC	20	HOPEWELL

[FR Doc. 88-9480 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 25592; Amdt. No. 1372]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the data of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 15, 1988.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2))

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended].

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 30, 1988*

Foley, AL—Foley Muni, NDB RWY 18, Orig.
Los Banos, CA—Los Banos Muni, VOR/DME RWY 14, Amdt. 3
Merced, CA—Merced Municipal/Macready Field, VOR RWY 12, Amdt. 6
Merced, CA—Merced Municipal/Macready Field, VOR RWY 30, Amdt. 14
Merced, CA—Merced Municipal/Macready Field, LOC BC RWY 12, Amdt. 8
Merced, CA—Merced Municipal/Macready Field, ILS RWY 30, Amdt. 9
Santa Monica, CA—Santa Monica Muni, VOR–A, Amdt. 7
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 14, Amdt. 1
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 32, Amdt. 1
Lakeland, FL—Lakeland Muni, VOR RWY 13, Amdt. 3, *Cancelled*
Clarinda, IA—Schenck Field, NDB–A, Amdt. 3
Sac City, IA—Sac City Muni, NDB RWY 36, Amdt. 2
Gastonia NC—Gastonia Muni, NDB RWY 3, Amdt. 6
Monroe, NC—Monroe, LOC RWY 5, Orig.
Monroe, NC—Monroe, NDB RWY 5, Orig.
Lancaster, OH—Fairfield County, VOR–A, Amdt. 7
Lancaster, OH—Fairfield County, SDF RWY 28, Amdt. 4
Lancaster, OH—Fairfield County, NDB RWY 28, Amdt. 5
Winnsboro, SC—Fairfield County, NDB RWY 4, Amdt. 3
Dickson, TN—Dickson Muni, NDB RWY 17, Orig.
Lebanon, TN—Lebanon Muni, NDB RWY 18, Orig.

** * * Effective June 2, 1988*

Carrollton, GA—West Georgia Regional, LOC RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Amdt. 2, *Cancelled*
Macon, GA—Herbert Smart Downtown, RADAR–1, Amdt. 1
Vandalia, IL—Vandalia Muni, VOR RWY 18, Amdt. 11
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 5
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 5
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 4
Ida Grove, Ida—Ida Grove Muni, NDB RWY 29, Amdt. 2, *Cancelled*
Milford, IA—Fuller, VOR/DME–A, Orig.
Rock Rapids, IA—Rock Rapids Muni, NDB RWY 16, Amdt. 1
Waukon, IA—Waukon Muni, VOR RWY 7, Orig., *Cancelled*
Jackson, MS—Hawkins Field, NDB RWY 16, Amdt. 4
Jackson, MS—Hawkins Field, ILS RWY 16, Amdt. 3
Jackson, MS—Hawkins Field, RNAV RWY 16, Amdt. 4
Kenansville, NC—P. B. Raiford, NDB RWY 22, Amdt. 4
Mt. Gilead, OH—Morrow County, VOR–A, Amdt. 3
Oklahoma City, OK—Will Rogers World, VOR RWY 17L, Orig.
Charleston, SC—Charleston AFB/INTL, ILS RWY 15, Amdt. 20
Charleston, SC—Charleston Executive, VOR–A, Amdt. 7, Cancelled
Center, TX—Center Muni, NDB RWY 16, Orig.

** * * Effective May 5, 1988*

Portland, OR—Portland Intl, NDB RWY 28L, Amdt. 2

** * * Effective April 13, 1988*

Binghamton, NY—Edwin A. Link Field Broome County, ILS RWY 16, Amdt. 4

** * * Effective April 12, 1988*

Daggett, CA—Barstow-Daggett, VOR or TACAN RWY 22, Amdt. 8

** * * Effective April 7, 1988*

St. Paul, MN—Lake Elmo, NDB RWY 3, Amdt. 2
Palestine, TX—Palestine Muni, VOR/DME RWY 17, Amdt. 1.

[FR Doc. 88–9479 Filed 4–28–88; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 157, 292, 375, 381 and 388

[Docket No. RM87–26–000]

Filing Fees Under the Independent Offices Appropriations Act of 1952

Issued April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in order to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is assessing these fees to reimburse the Agency for services and benefits provided by it. The new fees are for (1) applications for exemption of a small hydroelectric power project from all or part of Part I of the Federal Power Act and (2) written legal interpretations of the General Counsel. The Commission is also revising several existing filing fees for various reasons.

EFFECTIVE DATE: This order will become effective May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357–8530

SUPPLEMENTARY INFORMATION:

Order No. 494

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is also revising several existing filing Fees.[1]

II. Background

The Commission assesses filing fees and annual charges under several statutes. These provisions either authorize filing fees set at levels calculated to reimburse the government agencies involved for the average cost of rendering a specific service [2] or authorize annual charges for broad classes of entities to reimburse the Commission for the costs or regulating entire industry groups.[3] The

[1] The Commission's fee structure and procedures for collecting fees are codified in 18 CFR Part 381 (1987).

[2] Section 30(e) of the Federal Power Act (FPA), 16 U.S.C. 823a(e) (Supp. 1987), instructs the Commission to establish for applicants for licenses or exemptions for hydroelectric projects fees adequate to reimburse Federal and state fish and wildlife agencies for costs reasonably incurred in connection with studies and reviews carried out for purposes of compliance with section 30 of the FPA. The Commission established the fees authorized by section 30(e) of the FPA in December 1987. Order No. 467, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies, 52 FR 48398 (Dec. 22, 1987), FERC Stats. & Regs. ¶ 30,784. These fees and procedures to be codified at 18 CFR 4.300–4.305.

[3] Section 10(e) of the FPA, 16 U.S.C. 803(e) (1982), provides that licensees of hydroelectric projects under Part I of that statute shall pay reasonable annual charges as reimbursement for the Commission's costs of administering that Part and as compensation for the use, occupancy, and enjoyment of federal lands or other property. The Commission's regulations for annual charges under Part I of the FPA are codified at 18 CFR Part 11 (1987).

Section 3401 of the Omnibus Budget and Reconciliation Act of 1986, 42 U.S.C. 7178 (Supp. 1987), grants more comprehensive authority, providing that the Commission shall "assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." The Commission established these annual charges in May 1987. Order No. 472, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987), FERC States. & Regs. ¶ 30,746. The annual charges, to be codified at 18 CFR 382.201–382.203, are based on volumes of energy transported and sold by the gas pipelines, electric utilities, power marketing administrations, and the electric cooperative, and on the operating revenues received by the oil pipelines.

Independent Offices Appropriations Act of 1952 (IOAA) [4] authorizes the Commission to establish fees for specific services and benefits it renders to identifiable beneficiaries.

This final rule adds to and revises the Commission's fee schedule and procedures under the IOAA. The statute provides only general guidance on the manner in which agencies are to assess fees. It instructs the agencies to be fair in imposing any fees required and to consider such factors as the costs to the Government, the value of the service to the recipient, the public policy or other interest served, and "other relevant facts." [5] The IOAA states that it is the sense of Congress that each service or thing of value provided by an agency to a person is to be "self-sustaining to the extent possible." [6]

The principal administrative interpretation of the IOAA is OMB Circular A-25,[7] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which that recipient derives a special benefit.[8] The Circular further construes the IOAA as precluding a charge for services rendered "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public." [9]

The IOAA, OMB Circular A-25, and subsequent case law have established certain criteria that must be met in levying a fee under the IOAA. The Commission must:

(1) Identify the service for which the fee is to be assessed; [10]

(2) Explain why the particular service benefits the identifiable recipient more than it benefits others in the industry or the general public; [11]

(3) Base the fee on as small a category of service as possible; [12]

(4) Demonstrate calculation of the cost basis of each fee assessed.[13] The agency may satisfy this criterion by presenting a reasonable, not necessarily exact, relationship between its costs and the fee assessed.[14]

The Commission has established filing fees under its IOAA authority for many of its activities under its jurisdictional statutes, including the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and Parts II and III of the Federal Power Act (FPA). These fees and general procedures for determining them and collecting them are codified at 18 CFR Part 381. The U.S. Court of Appeals for the Tenth Circuit has upheld the fees established by the Commission under the authority of the IOAA in four prior rulemaking proceedings.[15]

The Commission calculated its fees using data on the work time expended on various Commission activities, on the number of completions of each activity, and on its annual costs. The Time Distribution Reporting System (TDRS) collects data on staff time expended on various activities (product categories).[16] The basic measure of work time expended is the work-month (WM), the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.[17] The Commission also compiles data on the number of completions in each product category and calculates an annual figure for its average total costs per employee.

The Commission's fee schedule is designed to account for all types of recoverable costs attributable to a particular Commission service and not merely the salaries of the employees who review the notices, applications, and requests in the particular product category. Pro rata portions of certain indirect costs are properly included in the calculation of fees for various agency services.[18] The Commission's actual yearly costs per employee for fiscal year 1987 were:

Salaries and benefits	$48,989.01
Travel	700.36
Transportation of things	50.51
Rents, communications, and utilities	6,048.83
Printing	1,221.97
Other services—excludes direct program contracts	6,812.19
Supplies	829.46
Equipment	2,346.94
Total	66,999.27

The Commission divides this annual total by twelve to yield an average WM cost of $5,583.27. The formula for determining each fee is the actual WMs dedicafed to a given fee category for the previous fiscal year (including direct WMs plus a pro rata share of WMs reported for relevant support activities) divided by the number of actual completions in that product category in the previous fiscal year and then multiplied by the average cost per WM in the previous fiscal year. The Commission multiplies the average WM cost by the average number of WMs required to complete each activity to obtain the average cost for each activity and then sets its fees on the basis of those average costs.

On November 5, 1987, the Commission issued a Notice of Proposed Rulemaking (NOPR), in which it proposed to

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[4] 31 U.S.C. 9701 (1982).

[5] *Id.* Section 9701(b)(2) (A)-(D).

[6] *Id.* Section 9701(a).

[7] Issued as Bureau of the Budget Circular A-25 (September 23, 1959). The United States Supreme Court expressed general approval for the interpretation of the IOAA embodied in Circular A-25. Federal Power Commission v. New England Power Co., 415 U.S. 345, 349-51 (1974).

[8] A "special benefit" accrues when a Government-rendered service "enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public," provides business stability or assures public confidence in the business activity of the beneficiary, or is performed at the request of the recipient and is above and beyond the services regularly received by the same industry or group or by the general public. OMB Circular A-25, ¶ 3(a)(1).

[9] *Id.* ¶ 3(a)(2).

[10] National Cable Television Ass'n, Inc. v. F.C.C., 554 F.2d 1094, 1100 (D.C. Cir. 1976) (the agency "must identify the activity which justifies each particular fee it assesses"). *See also* Federal Power Commission v. New England Power Co. at 349-351 (invalidating assessments against jurisdictional utilities in proportion to their wholesale sales and interchange of electricity since the "thrust of the Act" reached "only specific charges for specific services to specific individuals or companies" and Commission's formula could result in charges to companies which had no proceedings before the Commission during the year in question).

[11] Electronic Industries Ass'n v. F.C.C., 554 F.2d 1109, 1114 (D.C. Cir. 1976) ("require a certain nexus, a threshold level of private benefit, between the regulatee and the agency before a fee can be assessed against the recipient of the service.").

[12] *Id.* at 1116 ("we interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical.").

[13] *Id.* at 1117 ("This involves (a) an allocation of the specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include particular terms.").

[14] National Cable Television Ass'n, Inc. v. F.C.C. at 1105-06 ("Any computation such as those must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits. It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received.")

[15] Phillips Petroleum Co. v. FERC, 786 F.2d 370, 379 (10th Cir. 1986) (upholding the fees promulgated in Order Nos. 360, 361, 394 and 395).

[16] Twice a month Commission employees prepare TDRS report forms, listing the product categories on which they worked during the prior half-month period and the number of hours spent on each activity. These TDRS forms are forwarded through reviewer/supervisors and office coordinators, undergoing reviews at each stage to ensure the accuracy of the information, and are compiled by the Office of Administration.

[17] 18 CFR 381.102(c) (1987).

[18] Mississippi Power & Light Co. v. NRC, at 601 F.2d 223, 232 (5th Cir. 1979) *cert. denied*, 444 U.S. 1102 (1980).

establish three new fees and to revise seven existing filing fees or fee procedures.[19] Fourteen persons submitted comments in response to the NOPR.[20]

III. Discussion

A. New Fees

The Commission proposed new fees:

(1) For filing an application for exemption from all or part of Part I of the FPA for small hydroelectric power projects of 5 megawatts or less;

(2) For requesting a written legal interpretation by the General Counsel of a statute or regulation under the jurisdiction of the Commission (except for a request for interpretation of Part I of the FPA, the costs of which are included in charges assessed pursuant to section 10(e) of the FPA); and

(3) For filing by the owner or operator of a cogeneration or small power production facility of a notice under 18 CFR 292.207(a)(2) that the facility meets the requirements of 18 CFR 292.203 (qualifying facility notice).

Middle South Utilities System, the only commenter to address the proposals for new fees, supports imposition of a cost-based filing fee for each of the three services.[21]

1. *5 Megawatt Exemption.* The Commission is establishing a fee of $16,430 [22] for an application for exemption of a small hydroelectric power project from all or part of Part I of the FPA. This exemption is available for projects with a total installed capacity of 5 megawatts or less and is governed by Part 4, Subpart K of the Commission's regulations (5MW exemption).[23]

An application for a 5MW exemption is processed primarily by the Commission's Office of Hydropower Licensing (OHL). OHL first reviews the application to determine whether it meets the requirements of Part 4, Subpart K. If the application meets those requirements, it is accepted for filing and the Commission circulates a notice of application for exemption to interested agencies and publishes that notice in the **Federal Register.** Commission staff reviews any comments of government agencies and the general public, prepares an environmental assessment of the proposed project, and may recommend additional conditions for inclusion in any exemption issued. The Office of the General Counsel provides legal support in the review.

The Commission's costs and the costs of other Federal agencies in processing 5MW exemptions have heretofore been collected from hydroelectric licensees as part of the annual charges authorized by section 10(e) of the FPA. However, in order to implement the IOAA objective of assessing fees for specific services and benefits rendered to identifiable recipients, the Commission is establishing a separate filing fee for applications for 5MW exemptions.

An entity that receives a 5MW exemption obtains authorization to construct and operate a hydroelectric power project without the requirement of obtaining a license under Part I of the FPA. In practice, this exempts that entity from compliance with the broad range of continuing regulatory oversight provisions that are regularly included in such licenses. The streamlined procedure and the lower level of regulatory oversight associated with the 5MW exemption confer special benefits on an entity receiving that exemption.

The TDRS product category of an application for a 5MW exemption is the smallest practical unit of service on which to base a filing fee. The Commission currently collects work time data for this category and it has calculated the fee using that data for fiscal 1987.

2. *Written Legal Interpretation of the General Counsel.* The Commission is also establishing a fee of $2,460 for a request for a written legal interpretation by the General Counsel of any statute or regulation under the jurisdiction of the Commission, except for Part I of the FPA.[24] A request for an interpretation describes a specific fact situation, problem, or issue. It requires the General Counsel's staff to analyze relevant Commission and court precedents and applicable statutes in order to provide an opinion on the question posed.

The Commission had assessed a fee of $35 for a written legal interpretation of the NGPA and had not charged a fee for other written legal interpretations of the General Counsel.

Persons who receive written legal interpretations from the General Counsel benefit because the information and legal analysis provided in the opinion can guide the recipient in decisionmaking and in planning transactions and activities.

The category of requests for written legal interpretations from the General Counsel is the smallest practical unit for compiling work time and completion data. Although this data has been compiled separately for requests for written legal interpretations under the NGPA, the Commission no longer collects data according to the subject of the request. It is administratively more convenient to use a single category of written legal interpretations of the General Counsel, especially since the Commission will assess fees for all such requests.

3. *Qualifying Facility Notice.* The Commission has decided not to establish a fee for the filing of a notice by an owner or operator of a small power production facility or a cogeneration facility stating that the facility meets the criteria set forth in 18 CFR 292.203 to be a qualifying facility (QF).[25]

The Commission's Office of Electric Power Regulation (OEPR) enters receipt of a notice of qualifying status into the Commission's computer system and lists the facility as a qualifying small power production facility or a qualifying cogeneration facility in the Commission publication, "The Qualifying Facilities Report."

An owner or operator of a cogeneration or small power production facility is not required to file a notice of qualifying status. The Commission wishes to encourage the filing of QF notices for informational purposes and now believes that imposition of a fee, even the relatively small fee based on the Commission's minimal processing time, may discourage owners or operators from filing the discretionary QF notice.

B. Revised Fees and Procedures

The Commission also proposed seven revisions in its existing IOAA filing fees and procedures. These are discussed below:

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[19] Filing Fees under Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000, 52 FR 43612 (Nov. 13, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987], ¶ 32,454.

[20] Comments were submitted by: Allegheny Power System; Arizona Public Service Company; American Gas Association; Central Illinois Public Service Company; Commonwealth Edison Company *et al.*; Consumers Power Company; Iowa Public Service Company; Lone Star Gas Company; Middle South Utilities System; Oklahoma Gas and Electric Company; Public Citizen's Critical Mass Energy Project; Tampa Electric Company; Union Electric Company; and Wisconsin Power & Light Company.

[21] Comments of Middle South Utilities System at 2.

[22] The NOPR proposed a fee of $11,010, based on fiscal year 1986 TDRS and cost data. In calculating all fees in this final rule, the Commission uses fiscal year 1987 TDRS and cost data, which has become available since the issuance of the NOPR.

[23] 18 CFR 4.101-4.113 (1987).

[24] Costs incurred in completing written legal opinions interpreting Part I of the FPA are collected from hydroelectric licensees as a class under the annual charges provisions of section 10(e) of the FPA, which requires the Commission to recover the costs of administering Part I of the FPA through annual charges.

[25] 18 CFR 292.207(a) (1987).

1. *Revision of Rounding Procedure.* The Commission is adopting its proposal to revise its procedure for rounding costs in the calculation of filing fees when average costs for completion of a service exceed $100. The Commission will round the actual average costs per completion down to the nearest $10, rather than to the nearest $100, as had been the practice since the Commission adopted its first group of IOAA filing fees in 1984.[26] When average costs are $100 or less, the Commission will continue to round down to the nearest $5. None of the commenters opposed this proposal.

The Commission is revising its rounding procedure in order to establish fees that more accurately reflect the full costs of providing the services. Rounding procedures are not mandated by the IOAA and are governed by the dual objectives of full recovery of costs and administrative convenience. The revised rounding procedure adequately balances those two objectives and is effective for fees based on fiscal year 1987 data and for each fiscal year thereafter.

2. *Fee for Written Interpretations of the Natural Gas Policy Act by the General Counsel.* The Commission is including the existing fee category for written legal interpretations of the NGPA by the General Counsel [27] in the new fee category it is establishing in this rule for all written legal interpretations by the General Counsel. This action eliminates written legal interpretations under the NGPA as a separate fee category and raises the fee for such filings to the level set for all requests for written legal interpretations under the new § 381.305, or $2,460.

The Commission established a fee category in 1984 for written interpretations of the NGPA by the General Counsel. Historically, the Commission has categorically reduced the fee by approximately 65 percent from full cost recovery because it believed that recovery of actual costs through fees would substantially discourage requests for such interpretations.[28]

The American Gas Association (AGA) argues that a large increase in the fee for written interpretations of the NGPA could adversely affect small entities which, out of economic necessity, must rely on the Commission's legal opinions relatively more than do larger firms. AGA argues that the Commission recognized this concern when it established and adjusted the fee at a categorically reduced level. AGA also argues that requests for General Counsel interpretations do not confer special benefits on applicants but rather are Commission tools for voluntary compliance and enforcement and are prompted by ambiguity or lack of clarity in the Commission's own regulations.[29]

Any entity, including a small entity, may petition the Commission for a waiver of any filing fee pursuant to § 381.106 of the Commission's regulations upon a showing that recovery of the full cost of providing the service would cause hardship. A general provision for full cost recovery, coupled with the availability of the waiver procedure for specific cases of financial hardship, more closely reflects the intent of the IOAA that recipients of special benefits bear the costs of providing those beneficial services than does a categorical reduction of the fee for all applicants.

A person that receives a written legal interpretation derives a special benefit because it can use the information and legal analysis it receives to guide its planning and decisionmaking. The facts that such an interpretation may also be available to the Commission and to members of the public who did not pay for the service and that it may have a beneficial compliance and enforcement impact do not preclude assessment of a fee under the IOAA. In fact, a fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[30]

The Commission finds that the category of written legal interpretations of the General Counsel is the smallest practical unit on which to base cost data and fee calculations, that it is appropriate to assess a fee for all such interpretations, and that there is no persuasive reason to attempt to differentiate among written legal interpretations regarding the Commission's various jurisdictional statutes.

3. *Fees for Commission Certification of a Qualifying Small Power Production Facility and a Qualifying Cogeneration Facility.* The Commission divides the current fee category for applications for certification of qualifying facility (QF) status [31] into two categories, one for certification of qualifying small power production facilities and the other for certification of qualifying cogeneration facilities. The certification of qualifying status is for benefits under the Public Utility Regulatory Policies Act of 1978.

When the Commission established the single fee in 1985, it did not differentiate between applications for small power production facilities and cogeneration facilities because it did not anticipate a differential in the costs of reviewing the two kinds of applications and because the Commission's management information system did not separate the two types of applications.[32] However, the current TDRS includes separate product categories for the two types of certification applications and analysis of that TDRS data reveals a clear differential in processing times. In order to comply with the IOAA requirement that fees be based on costs to the Government and to reflect fiscal year 1987 costs of completion, the Commission is increasing the fee for certification as a qualifying facility from $1,300 to $6,560 for a small power production facility and from $1,300 to $4,310 for a cogeneration facility.

AGA supports the concept of different fees for the two types of requests based on the varied requirements and time involved in processing the applications, but objects to their level. AGA states that filing fees for applications for qualifying status discourage small industrial and commercial energy users from obtaining the benefits of cogeneration and that the proposed increase in those fees is inconsistent with the stated congressional intent of PURPA to remove "institutional barriers against cogeneration." [33]

Middle South Utilities System notes that the splitting of the QF fee categories is inconsistent with the Commission's proposal to consolidate electric rate filing fee categories discussed below.[34]

Fees for the costs of services actually rendered to QF certification applicants are not "institutional barriers to cogeneration," but are part of a broad structure of agency fees, authorized by the IOAA and based on special benefits

[26] Order No. 360, Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984), FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,542.

[27] 18 CFR 381.405 (1987)

[28] Order No. 394, Fees Applicable to the Natural Gas Policy Act, 49 FR 35357, 35361 (Sept. 7, 1984), FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,593. The Commission continued that categorical reduction in the two subsequent annual adjustments of fees. 51 FR at 4311 (Feb. 4, 1986); and 52 FR at 10367 (April 1, 1987).

[29] Comments of AGA at 8–10.

[30] Electronic Industries Association v. F.C.C., 554 F.2d 1109, 1115 (D.C. Cir. 1976); Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 230 (5th Cir. 1979), *cert denied*, 444 U.S. 1102 (1980).

[31] 18 CFR 381.505 (1987)

[32] 52 FR 43615 (Nov. 13, 1987).

[33] Comments of AGA at 3, citing H.R. Rep. No. 543, 95th Cong., 2d Sess. 57 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 7673.

[34] Comments of Middle South Utilities System at 2.

accruing to identifiable beneficiaries. QF certification exempts such facilities from the burden of complying with certain state and Federal regulations, requires electric utilities to offer to purchase power from the QF at the utilities' avoided cost of alternative power and to sell back-up power to the QF, and facilitates project financing. Inasmuch as applicants clearly receive special benefits from the process, it is appropriate to charge for that service. The legislative interest in promoting cogeneration and small power production facilities does not justify an across-the-board reduction or elimination of these fees for all members of the applicant class, especially given the existence of the waiver procedure for individual applicants whose circumstances may warrant a fee reduction.

AGA also suggests that the higher fees are particularly inappropriate in the case of packaged cogeneration units with modular components and standardized installation.[35] This suggestion does not justify creation of special product and fee categories. Attempts to create subcategories based on patterns or similarities in filings within the existing TDRS product categories and current fee categories are administratively infeasible because they go beyond the smallest practical unit of service.

AGA also notes that, despite the Commission's acknowledgment in the NOPR that there may be a disproportionate burden on small companies, the fee waiver process provides no significant relief for many small companies.[36] AGA's criticism that the waiver procedure cannot provide relief for small but profitable firms reflects a misreading of that provision. The Commission has already addressed this objection in an earlier IOAA fees rulemaking. The Commision stated that it would grant a waiver if an applicant demonstrates that payment of the fee would cause severe economic hardship. The fact that an applicant is solvent does not mean it cannot qualify, if payment of the fee would cause such hardship.[37]

AGA makes the broader argument that a Commission certification of a cogeneration or a small power production facility does not benefit the applicant more than the general public and therefore is not an appropriate subject for fees under the IOAA.[38] AGA's statement that qualifying facility certification does not benefit the applicant more than the general public is incorrect. Certification as a qualifying facility under PURPA permits the facility to sell or purchase power at avoided cost rates and may facilitate financing for the project. Both are special benefits. The fact that the general public may also benefit from the operation of small power production and cogeneration facilities does not invalidate the filing fee. A fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[39]

4. *Fee for Petition for Declaratory Order.* The Commission is raising the fee for a petition for issuance of a declaratory order under § 385.207 of the Commission's Procedural Rules [40] to $11,670, which reflects full recovery of the Commission's costs of processing those petitions.

That provision permits a person to file a petition seeking a declaratory order to terminate a controversy or to remove uncertainty.

In the NOPR, the Commission proposed to raise the fee for a petition for a declaratory order to a level that would fully recover the costs of processing those petitions. The Commission had established this fee in 1984 at a level reflecting an approximately 60 percent reduction from full cost recovery and had continued that categorical reduction through the two subsequent annual adjustments.[41] Three commenters object to this change.

Lone Star Gas Company (Lone Star) urges the Commission to exercise its discretion to limit fees to less than full cost recovery to avoid either undermining Commission activities or adversely affecting applicants. Lone Star suggests that the Commission should be encouraging applications for declaratory orders, which can eliminate controversies and remove uncertainties over the proper interpretation and application of Commission requirements.[42]

Public Citizens' Critical Mass Energy Project (Public Citizen) and AGA comment that requests for declaratory orders are often filed by developers of cogeneration and small power production projects who seek interpretations of Commission requirements prior to making substantial investments. They express concern that higher declaratory order fees would disproportionately impact smaller projects and that these and other fees would discourage innovative new projects, thereby stunting technological development.[43]

Contrary to the arguments by Public Citizen and AGA, the great majority of applications for delcaratory orders have been filed by large or financially substantial entities.[44] Any entity that is economically unable to pay the appropriate fee may petition for a waiver of that fee under 19 CFR 381.106. Full cost recovery with the availability of a fee waiver for economic hardship is preferable, in terms of both equity and fiscal responsibility, to categorical reduction of an entire fee category in which experience has shown that the majority of applicants can easily bear the full costs.

Based on its experience, the Commission no longer believes that concern that a fee representing the full cost of issuing a declaratory order may discourage potential applicants from filing requests justifies a categorical reduction of that fee.

AGA further maintains that requests for declaratory orders do not confer special benefits and, therefore, are not appropriate subjects for fees under the IOAA. It suggests that such petitions are often necessary because Commission regulations are ambiguous or unclear and that the Commission has sometimes used declaratory orders to provide industry-wide guidance on public policy issues extending beyond the case of the individual applicant. Finally, AGA suggests that interveners in declaratory order proceedings drive up costs, derive benefits from the proceedings, and pay nothing, thereby causing applicants to subsidize the interveners.[45]

An applicant for a declaratory order seeks to settle a controversy or to remove uncertainty on an issue, usually in order to advance its own decisionmaking or planning. The applicant is a clearly identifiable

[35] Comments of AGA at 4–5.

[36] Comments of AGA at 5–6.

[37] Order 435–A, Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, 51 FR 35347, at 35352 (Oct. 3, 1986), FERC Stats. & Regs. ¶ 30,713.

[38] Comments of AGA at 6–7

[39] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[40] 18 CFR 385.207 (1987). No fee is assessed for declaratory order petitions that solely concern hydroelectric matters under Part I of the FPA under the IOAA because those costs are included in the calculation of the annual charges under section 10(e) of the FPA, which provides for reimbursement of the costs of administering Part I.

[41] Order No. 395, Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984), FERC Stats. Regs. [Regulations Preambles 1982–85] ¶ 30,592, 51 FR 4310 (Feb. 4, 1986); 52 FR 10366 (April 1, 1987).

[42] Comments of Lone Star at 2–3.

[43] Comments of Public Citizen at 1–2; Comments of AGA at 9.

[44] Of 99 applications for declaratory orders filed with the Commission in fiscal years 1985, 1986, and 1987, over four-fifths were filed by large or financially substantial entities.

[45] Comments of AGA at 10.

recipient of a special benefit, since its gain is more immediate and substantial than any incidental gain for the general public from the resolution of the issue. Although interveners may derive benefits from and increase the costs of declaratory order proceedings, the declaratory order applicants remain the prinicpal beneficiaries and the mere fact that others may benefit does not preclude assessing a fee against those who initiate the proceeding to seek a special benefit.

5. *Fee for Commission Review of Jurisdictional Agency Determinations.* The Commission is revising the means by which it determines the fee for its review of jurisdictional agency determinations under section 503 for the NGPA [46] and is raising that fee from $35 to $75.

Section 503 provides that Federal or state jurisdictional agencies may determine that natural gas from particular wells qualifies for certain NGPA price categories, subject to review by the Commission. Within 15 days of its decision, the jurisdictional agency gives written notice of its determination to the Commission.[47] If the Commission does not reverse the jurisdictional agency's well-category determination on review, the producer may receive the maximum lawful price for the category determined.[48]

In the NOPR, the Commission proposed to include the cost of determination audits in the cost basis for this product category. In determination audits, the Commission reviews certain of the jurisdictional agency determinations processed during the previous year to verify their accuracy.[49]

AGA opposes implementing this proposal. AGA argues that applicants would be required to pay for double-checking the accuracy of the Commission work.[50] In the past, the Commission has excluded the costs of determination audits from the cost of jurisdictional determinations because it believed that the audits were not part of the service of reviewing a jurisdictional agency determination.[51] However, the Commission's experience has demonstrated that, because determination audits are the primary means of ensuring that the initial determinations are accurate, their costs are appropriately included in the total costs of reviews of jurisdictional agency determinations. Review mechanisms to assure the accuracy of a process are a legitimate part of the Commission's provision of the service.

6. *Fee for Electric Utility Rate Filings Under Sections 205 and 206 of the FPA.* The Commission is modifying its fee categories for electric utility rate filings under sections 205 and 206 of the FPA. All electric utility rate filings under those provisions, except those that have no effect on the rate the utility charges or that involve only rate decreases, will be subject to a fee of $5,780. Those excepted filings, formerly defined as "Class 1 rate schedule filings," will not be subject to a fee. All filings formerly classified as "Class 2 rate schedule filings" and "Class 3 rate schedule filings" will be subject to the single filing fee of $5,780.[52]

The Commission proposed to consolidate the three categories of filing fees it established in Order No. 435 [53] into one fee category. The Commission stated that it had found that the three-tiered classification scheme was administratively unworkable.[54]

Eleven commenters oppose consolidation of the electric rate filing fees, arguing generally that the three-tiered classification system is both valid and workable, that the proposed changes would be contrary to the express provisions and judicial and regulatory interpretations of the IOAA, and that those changes would create practical problems. Several commenters suggest that, even if some modification of the fee categories is warranted, there are more appropriate alternatives than that proposed by the Commission.

Commenters maintain that the rationale for the creation and use of the three fee categories stated in Order No. 435 remains convincing and that the Commission has failed to provide specific facts to support its assertions that three categories are unworkable.[55] Several commenters contend that a single consolidated fee is an unjustified step away from the IOAA objective that a fee be based on as small a category of service as practical, especially in the face of evidence from two years' experience that the more specific three-tiered fee system is both workable and justified by administrative costs differences.[56] Other commenters suggest that the Commission's apparent justifications of greater simplicity and ease of administration are not primary considerations under the IOAA and do not outweigh the requirements that fee structures be cost-based, equitable, and self-sustaining to the extent possible.[57]

Two commenters argue that if the three classes were consolidated, Class 3-type filings would no longer be selfsustaining, but would be subsidized by Class 1 and Class 2 fees.[58]

One commenter suggests that a blended fee may discourage certain types of small-scale transactions, such as short-term sales of interchange or coordination energy and short-term voluntary wheeling, which the Commission has recently been encouraging.[59]

Commenters offer a range of alternatives in which they seek to reduce administrative problems with the multiple-category system. One commenter suggests that the Commission could resolve problems with the classification process by more carefully defining the various categories of filings.[60] Other commenters suggest an expedited initial review by employees trained to verify electric rate filing classes or a post-processing review to determine whether the initial fee classification was correct, with a surcharge levied if the initial fee was too low or a refund issued if the initial fee was too high.[61]

Commenters suggest two-tiered fee systems based on whether there is an agreement by customers to the proposed rate [62] or whether the filing is supported by Period II data.[63] Another commenter suggests that the Commission use direct billing to eliminate intra-class subsidies.[64]

During the time the three-tiered classification system for rate filings has been in effect, the Commission has found it administratively difficult to make a prompt and accurate determination of the class of a rate filing upon receipt of that filing. Classification is made difficult because the

[46] 15 U.S.C. 3413 (1982).
[47] 18 CFR 274.104 (1987).
[48] 18 CFR 275 (1987).
[49] 52 FR at 43616 (Nov. 13, 1987).
[50] Comments of AGA at 10–11.
[51] 52 FR 43616 (Nov. 13, 1987).
[52] Rate filing classes and fee categories were defined at 18 CFR 381.502–381.504 (1987).
[53] Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, 50 FR 40 347 at 40,348 (Oct. 3, 1985), FERC Stats. and Regs. [Regulation Preambles 1982–1985], ¶ 30,663.
[54] 52 FR 43616–43617 (Nov. 13, 1987).
[55] Comments of Central Illinois Public Service at 3.
[56] Comments of Arizona Public Service at 2; Comments of Consumers Power Company at 2–3.
[57] Comments of Iowa Public Service at 2.
[58] Comments of Central Illinois Public Service at 5; Comments of Consumers Power Company at 3.
[59] Comments of Commonwealth Edison at 13.
[60] Comments of Oklahoma Gas and Electric at 2.
[61] Comments of Middle South Utilities at 2; Comments of Wisconsin Power & Light Company at 2.
[62] Comments of Iowa Public Service at 2–3.
[63] Comments of Consumers Power Company at 4–5; Comments of Tampa Electric Company at 8.
[64] Comments of Central Illinois Public Service at 12.

Commission frequently receives multiple rate filings under single cover and rate filings which are misclassified and because ambiguous filings require transfer from clerical docketing staff to rate analysts for proper classification. Because of the volume of electric rate filings the Commission receives, the Commission believes that the need for prompt and accurate fee determinations requires a departure from the use of the three-tiered classification system.[65] Therefore, despite the best efforts of the Commission, the three classes established in Order No. 435 have not proven to be the smallest practical units of service, as the Commission had hoped in promulgating those fee categories, and the Commission has decided to abandon that framework.

However, the Commission is persuaded by the comments that to consolidate all three filing fee categories would cause those who file relatively simple class 1 rate filings; that often involve minor schedule modifications, to bear a disproportionate fee burden. The Commission has therefore determined that equity and administrative ease support eliminating fees for filings that would have no effect on rates or would involve only rate decreases (formerly "Class 1 rate schedule filings") and consolidating all other rate schedule filings under sections 205 and 206 of the FPA into a single fee category. A person that submits a filing that would have no effect on rates or would involve only rate decreases should include a statement to that effect on the cover sheet of the filing and it will not be assessed a fee. The former class 2 and class 3 rate schedule filings, which involve a significantly greater amount of processing time, will be assessed a uniform fee of $5,780 per filing.

7. *Elimination of Fee for Certain Applications for Prior Notice Blanket Certificates.* The Commission is eliminating the fee associated with an application for a prior notice blanket certificate under § 284.223(b) of the Commission's regulations when the applicant for that certificate has already paid the fee required under § 284.223(d) to accompany the filing of its initial report of transportation pursuant to a self-implementing blanket certificate under § 284.223(a).

Current fees associated with transportation under the NGA section 7 blanket certificate regulations[66] are greater than those associated with the NGPA section 311 transportation regulations[67] if the transportation is for more than 120 days.

This difference in fees may create a regulatory bias in favor of transportation of gas under NGPA section 311 and the Commission is therefore revising its regulations to eliminate the difference.

AGA and Lone Star commented in support of this change.[68]

IV. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA)[69] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Specifically, if an agency promulgates a final rule under the Administrative Procedure Act,[70] a final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by public comments in response to any initial regulatory flexibility analysis and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected.

The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small entities and to encourage the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on small entities.

In this final rule, the Commission presents its reasons for its action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes several new fees and revises several existing fees paid to the Commission for certain benefits provided. This rule would affect a wide variety of entities under the jurisdiction of the Commission, including electric utilities, natural gas pipelines, developers of 5MW hydroelectric projects, persons seeking certification of QF status as small power producer or cogeneration facilities, and entities seeking declaratory orders, written interpretation by the Office of the General Counsel, or jurisdictional agency determinations.

The Commission recognizes that the new and revised fees adopted in this rule may have a significant impact on a substantial number of small entities. Section 603(c) of the RFA requires that the Commission discuss significant alternatives to the proposal if that proposal may have a significant economic impact on a substantial number of small entities. The Commission had already attempted to minimize any disproportionate burden of this rule on small businesses. The Commission's regulations concerning fees include a provision for the waiver of fees for applicants that demonstrate severe economic hardship.[71]

The Commission believes that it has satisfied the dual statutory mandates of the RFA and the IOAA in this rulemaking by establishing a fee structure which includes equitable, self-sustaining charges for services which provide special benefits to identifiable recipients, but also provides mechanisms for relief for small entities.

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[72] and OMB's regulations.[73] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Timothy Shaughnessy, Division of Organization and Management Analysis, (202) 357-5600). Comments on the information collection provisions in this rule may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VI. Effective Date

This rule is effective May 31, 1988.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

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[65] The Commission received 737 electric rate filings in fiscal year 1987.

[66] 18 CFR Part 284, Subpart G (1987). A shipper that chooses the blanket certificate option under NGA section 7 generally first obtains a self-implementing blanket certificate under § 284.223(a). That certificate is valid for one period of up to 120 days and § 284.223(d) requires that an initial report of transportation be accompanied by the fee set in § 381.404. For transportation beyond the initial 120 days, a shipper must apply for a prior notice blanket certificate under § 284.223(b) and § 157.205 requires that an applicant for a prior notice certificate pay the fee set in § 381.208.

[67] 18 CFR Part 284, Subpart B (1987). A shipper that chooses to utilize the NGPA section 311 transportation regulations obtains a permanent certificate and is required by § 284.106(e) to pay the fee set by § 381.404 to accompany an initial report of transportation.

[68] Comments of AGA at 11; Lone Star at 3.

[69] 5 U.S.C. 601-612 (1982).

[70] 5 U.S.C. 553 (1982).

[71] 18 CFR 381.106 (1987).

[72] 44 U.S.C. 3501-20 (1982).

[73] 5 CFR 1320.12 (1987).

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 388

Freedom of information.

In consideration of the foregoing, the Commission proposes to amend Parts 4, 157, 292, 375, 381, and 388 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.107, paragraph (a) is revised to read as follows:

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* An application for exemption from licensing submitted under this subpart must contain the introductory statement, the exhibits described in this section, the fee prescribed in § 381.601 of this chapter and, if the project structures would use or occupy any lands other than Federal lands, an appendix containing documentary evidence showing that applicant has the real property interests required under § 4.31(c)(2)(ii).

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

4. In § 157.205, paragraph (b) is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* In addition to the fee prescribed in paragraph (c) of this section, for any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission an original and fifteen copies of request for authorization under the notice of this section that contains:

(1) The exact legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(2) The docket number in which its blanket certificate was issued;

(3) Any information required in § 157.208 through § 157.218 of this chapter for the particular activity;

(4) A verified statement that the proposed activity complies with the requirements of this subpart;

(5) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose; and

(6) Identities and docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise the applications on file will be rejected under paragraph (d) of this section without prejudice to refiling when all parties are ready to proceed.

* * * * *

5. In § 157.205, paragraphs (c) through (h) are redesignated as paragraphs (d) through (i) and a new paragraph (c) is added to read as follows:

(c) *Fees.* The certificate holder must file the fee prescribed in § 381.208 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, except that no fee will be assessed for abandonment activities under § 157.216(b) of this chapter or for transportation under § 284.223(b) of this chapter, if the fee required under § 284.223(d) for the initial report has previously been paid for existing transportation authorized by § 284.223(a) of this chapter.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

6. The authority citation for Part 292 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Indepenent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982), as amended by the Electric Consumers Protection of 1986; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982) as amended.

7. In § 292.207, paragraph (b)(2) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(2) *General contents of application.* The application must be accompanied by the fee prescribed in § 381.505 of this chapter and must contain the following information:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) The percentage of ownership by any electric utility or by any electric utility holding company, or by any person owned by either.

* * * * *

PART 375—THE COMMISSION

8. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7532 (1982), E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553 (1982); Federal Power Act, 16 U.S.C. 791–828c (1982), as amended by the Electric Consumers Protection Act of 1986; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public

Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

9. In § 375.308, paragraph (m) is revised to read as follows:

§ 375.308 Delegations to the Director to the Office of Electric Power Regulation.

* * * * *

(m) Deny or grant, in whole or in part, a petition for waiver of fees prescribed in §§ 381.502, 381.505, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106 of this chapter.

* * * * *

10. In § 375.309, paragraph (f) is revised to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.305 of this chapter in accordance with § 381.106 of this chapter.

11. In § 375.314, paragraph (gg) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.601 of this chapter, in accordance with § 381.106 of this chapter.

* * * * *

PART 381—FEES

12. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

13. In § 381.104, paragraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula.* The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year. The fee is rounded down to the nearest $5 increment if the fee is $100 or less, and to the nearest $10 increment if the fee is more than $100.

* * * * *

14. Section 381.208 is revised to read as follows:

§ 381.208 Requests under the blanket certificate notice and protest procedures.

(a) Except as provided in paragraph (b) of this section, the fee established for a request for authorization under blanket certificate notice and protest procedures is $2,120. The fee must be submitted in accordance with Subpart A of this part and § 157.205(b) of this chapter.

(b) If the fee for an application under § 284.223(d) of this chapter has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter, then no fee is assessed for the authorization under the blanket certificate notice and protest procedures.

15. In § 381.302, paragraph (a) is revised to read as follows:

§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act.)

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is $11,670. The fee must be submitted in accordance with Subpart A of this part.

* * * * *

16. A new § 381.305 is added to read as follows:

§ 381.305 Interpretations by the Office of the General Counsel.

(a) Except as provided in paragraph (b) of this section, the fee established for a written interpretation by the Office of the General Counsel of any statute or implementing regulation under the jurisdiction of the Commission is $2,460. The fee must be submitted in accordance with Subpart A of this part and § 385.1901 or § 388.104 of this chapter.

(b) No fee is necessary to file a request for a written interpretation by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with the request for a written interpretation. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

17. Section 381.402 is revised to read as follows:

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $75. The fee must be submitted in accordance with Subpart A of this part and § 274.201(e) of this chapter.

§ 381.405 [Removed and Reserved]

18. Section 381.405, Interpretations by the Office of the General Counsel, is removed in its entirety and reserved.

19. Section 381.502 is revised to read as follows:

§ 381.502 Rate schedule filings under sections 205 and 206 of the Federal Power Act.

(a) Except as provided in paragraph (b) of this section, and unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for rate schedule filings under sections 205 and 206 of the Federal Power Act is $5,780. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

(b) There is no fee charged for rate schedule filings under sections 205 and 206 of the Federal Power Act which have no effect on the rate the utility charges or which involve only rate decreases.

§ 381.503 [Removed and Reserved]

20. Section 381.503, Class 2 rate schedule filings, is removed in its entirety and reserved.

§ 381.504 [Removed and Reserved]

21. Section 381.504, Class 3 rate schedule filings, is removed in its entirety and reserved.

22. Section 381.505 is revised to read as follows:

§ 381.505 Certification of qualifying status as a small power production facility or cogeneration facility.

(a) Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act, is $6,560 and the fee established for an

application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act, is $4,310.

(b) The fee filed under this section must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

23. Subpart F consisting of § 381.601 is added to read as follows:

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978

§ 381.601 5 Megawatt exemption application.

The fee established for a 5 Megawatt exemption application under section 405 of the Public Utility Regulatory Policies Act of 1978 and Part 4, Subpart K of this chapter is $16,430. The fee must be submitted in accordance with Subpart A of this part.

PART 388—INFORMATION AND REQUESTS

24. The authority citation for Part 388 continues to read as follows:

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

25. Section 388.104 is revised to read as follows:

§ 388.104 Informal advice from Commission staff.

(a) The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates, and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the chief of the appropriate office or division.

(b) Any inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed in § 381.301 of this chapter.

(c) A request directed to the Office of the General Counsel for a legal interpretation of any statute or implementing regulation under the jurisdiction of the Commission must be accompanied by the fee prescribed in § 381.305 of this chapter.

[FR Doc. 88–9462 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 381

[Docket Nos. RM82–25–000 et al.]

Update of Filing Fees Under the Independent Offices Appropriations Act of 1952

April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission, in accordance with § 381.104 of the Commission's regulations, issues an annual adjustment of the filing fees assessed under the authority of the Independent Offices Appropriations Act of 1952. The Commission updates these fees on the basis of data for fiscal year 1987.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8400.

SUPPLEMENTARY INFORMATION:

In the Matter of: Fees Applicable to Producer Matters Under the Natural Gas Act, Docket No. RM82–25–000; Fees Applicable to Natural Gas Pipeline Rate Matters, Docket No. RM83–2–000; Fees Applicable to the Natural Gas Policy Act, Docket No. RM82–30–000; Fees Applicable to General Activities, Docket No. RM82–35–000; Fees Applicable to Natural Gas Pipelines, Docket No. RM82–31–000; Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, Docket No. RM82–38–000; Revisions to the Purchased Gas Adjustment Regulations, Docket No. RM86–14–000; and Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87–26–000.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,[1] is issuing this final rule to update the filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. The Independent Offices Appropriations Act of 1952 (IOAA) authorizes the Commission to establish and collect these fees [2] and the Commission's regulations require an annual update of the IOAA fees based on data from the previous fiscal year.[3] The Commission is establishing updated fees on the basis of the Commission's cost, completion, and work time data for fiscal year 1987.[4]

The adjusted fees announced in this final rule will become effective 30 days after publication in the **Federal Register**.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act	
1. Blanket certificates for small producers (codified at 18 CFR 381.201)	$540
2. Producer certificates of public convenience and necessity (18 CFR 381.202)	1,920
3. Changes in producer rate schedules (18 CFR 381.203)	510
Fees Applicable to Natural Gas Pipeline Rate Matters	
1. Pipeline tariff filings for general changes in rates and for changes other than in rates (18 CFR 381.204)	4,320
2. Pipeline tariff filings that track certain costs:	
(a) Annual filing under § 154.305 (18 CFR 381.205(a))	4,440
(b) Quarterly filing under § 154.308 (18 CFR 381.205(b))	910
(c) Interim adjustment filing under § 154.309 (18 CFR 381.205(c))	910
(d) Any other tariff filing that tracks costs (18 CFR 381.205(d))	910
Fees Applicable to the Natural Gas Policy Act	
1. Adjustments under section 502(c) of the Natural Gas Policy Act (18 CFR 381.401)	2,430
2. Review of jurisdictional agency determinations (18 CFR 381.402)	75
3. Petitions for rate approval pursuant to § 284.123(b)(2) (18 CFR 381.403)	1,990
4. Initial or extension reports for Title III transactions (18 CFR 381.404)	410
Fees Applicable to General Activities	
1. Request for interpretation by the Office of the Chief Accountant (18 CFR 381.301)	200
2. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302)	11,670
3. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999 (18 CFR 381.303(b))	100
$10,000–29,999 (18 CFR 381.303(b))	600
$30,000 or more (18 CFR 381.303(a))	10,260
4. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999 (18 CFR 381.304(b))	100
$10,000–29,999 (18 CFR 381.304(b))	600

[1] 18 CFR 375.313(a) (1987).

[2] 31 U.S.C. 9701 (1982).

[3] 18 CFR 381.104 (1987).

[4] The final rule in Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87–26–000, published April 29, 1988, established three new filing fees and updated several other IOAA fees based on fiscal year 1987 cost, completion, and work time data. That rule established current levels for the fees found in 18 CFR 381.208(a), 381.302(a), 381.305(a), 381.402, 381.502(a), 381.505(a), and 381.601.

$30,000 or more [18 CFR 381.304(a)]	3,660
5. Written legal interpretations by the Office of the General Counsel [18 CFR 381.305]	2,460
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications [18 CFR 381.207(b)]	19,450
2. Requests under the blanket certificate notice and protest procedures [18 CFR 381.208]	2,120
3. Curtailment filings [18 CFR 381.209(b)]	4,060
Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers	
1. Rate schedule filings under sections 205 and 206 of the Federal Power Act [18 CFR 381.502]	[5] 5,780
2. Certification of qualifying status as a small power production facility [18 CFR 381.505]	6,560
3. Certification of qualifying status as a cogeneration facility [18 CFR 381.505]	4,310
4. Extension of equipment testing periods [18 CFR 381.506]	1,110
5. Applications to assume obligation or liability as guarantor or for the negotiated placement of securities [18 CFR 381.507]	3,430
6. Authorization to issue equity or debt securities [18 CFR 381.508]	2,010
7. Corporate applications involving one or more jurisdictional utilities [18 CFR 381.509]	8,420
8. Applications to hold interlocking positions [18 CFR 381.510]	1,100
Fees Applicable to the Public Utility Regulatory Policies Act of 1978	
1. 5 Megawatt exemption application [18 CFR 381.601]	16,430

[5] No fee is assessed for rate schedule filings that have no effect on the rate a utility charges or that involve only rate decreases.

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 381 in Chapter I, Title 18 *Code of Federal Regulations*, as set forth below.

Vincent E. Mason,

Executive Director.

PART 381—FEES

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 381.201 [Amended]

2. Section 381.201 is amended by removing $500.00 and inserting $540 in its place.

§ 381.202 [Amended]

3. Section 381.202 is amended by removing $2,400.00 and inserting $1,920 in its place.

§ 381.203 [Amended]

4. Section 381.203 is amended by removing $400.00 and inserting $510 in its place.

§ 381.204 [Amended]

5. Section 381.204 is amended by removing $4,700 and inserting $4,320 in its place.

§ 381.205 [Amended]

6. In § 381.205, paragraph (a) is amended by removing $1800 and inserting $4,440 in its place.

7. In § 381.205, paragraph (b) is amended by removing $300 and inserting $910 in its place.

8. In § 381.205, paragraph (c) is amended by removing $300 and inserting $910 in its place.

9. In § 381.205, paragraph (d) is amended by removing $300 and inserting $910 in its place.

§ 381.207 [Amended]

10. In § 381.207, paragraph (b) is amended by removing $15,000 and inserting $19,450 in its place.

§ 381.209 [Amended]

11. In § 381.209, paragraph (b) is amended by removing $7,200 and inserting $4,060 in its place.

§ 381.301 [Amended]

12. Section 381.301 is amended by removing $100 and inserting $200 in its place.

§ 381.303 [Amended]

13. In § 381.303, paragraph (a) is amended by removing $7,300 and inserting $10,260 in its place.

§ 381.304 [Amended]

14. In § 381.304, paragraph (a) is amended by removing $5,800 and inserting $3,660 in its place.

§ 381.401 [Amended]

15. Section 381.401 is amended by removing $3,500 and inserting $2,430 in its place.

§ 381.403 [Amended]

16. Section 381.403 is amended by removing $4,900 and inserting $1,990 in its place.

§ 381.404 [Amended]

17. Section 381.404 is amended by removing $600 and inserting $410 in its place.

§ 381.506 [Amended]

18. Section 381.506 is amended by removing $1,900 and inserting $1,110 in its place.

§ 381.507 [Amended]

19. Section 381.507 is amended by removing $2,900 and inserting $3,430 in its place.

§ 381.508 [Amended]

20. Section 381.508 is amended by removing $1,200 and inserting $2,010 in its place.

§ 381.509 [Amended]

21. Section 381.509 is amended by removing $10,300 and inserting $8,420 in its place.

§ 381.510 [Amended]

22. Section 381.510 is amended by removing $2,700 and inserting $1,100 in its place.

[FR Doc. 88–9460 Filed 4–28–88; 8:45 am]

BILLING CODE 6717–01–M

PANAMA CANAL COMMISSION

35 CFR Part 103

General Provisions Governing Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today adopting a final rule amending 35 CFR 103.8, concerning preference in transit schedulings and order of transiting vessels. The changes take into account the agency's experience with the Panama Canal Transit Booking System over the last year and the corresponding needs of the shipping community.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634–6441 (TDD), or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011–507–52–7511.

SUPPLEMENTARY INFORMATION: On October 13, 1987 an interim rule was published in the **Federal Register** (52 FR 37952) setting forth several changes to the booking system regulations based on numerous requests from Canal users that the Canal Commission revise the tie-breaking procedures, relax the

arrival time for restricted vessels and change the cancellation provision in the present rules. Interested parties were given the opportunity to submit written comments by November 12, 1987. During that time period, the agency received no comments.

Following is a summary of how the rules published today modify the rules which have been in effect concerning preference in the transit schedule and order of transiting vessels:

The Commission's present regulations in 35 CFR 103.8(g) require a 2-day notice of cancellation of transit bookings. This section is revised by deleting the 2-day period and requiring only that notice be provided prior to the required arrival time.

It also revises the schedule of cancellation fees by providing a sliding scale depending on the length of the advance notice of cancellation.

The Commission has determined that these rules do not constitute a major change within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local government agencies or geographic regions. Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

Lists of Subjects in 35 CFR Part 103

Panama Canal, Vessels, Booking system, Navigation (Water).

PART 103—[AMENDED]

Accordingly, the interim rule amending 35 CFR Part 103 which was published at 52 FR 37952 on October 13, 1987, is adopted as a final rule without change.

Authority: 22 U.S.C. 3811, E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

Dated: April 11, 1988.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 88-9477 Filed 4-28-88; 8:45 am]

BILLING CODE 3640-04-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM88-1 and R87-1; Order No. 783]

Amendment to Domestic Mail Classification Schedule: Postal Rate and Fee Changes, 1987

Issued April 19, 1988.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the March 22, 1988, adoption of the Postal Rate Commission's recommended Docket No. R87-1 decision by the Governors of the Postal Service, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). In addition to the changes in rates and fees made as a result of Docket No. R87-1, a number of changes (both editorial and substantive) were made in the classification provisions for postal services.

EFFECTIVE DATE: April 3, 1988.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H. Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On March 22, 1988, the Governors of the Postal Service approved a decision (Docket No. R87-1) of the Commission recommending general postal rate and fee increases as well as a number of changes in the DMCS. The effective date for the changes is April 3, 1988. On May 7, 1987, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3622-3623, requesting rate increases and changes in some of the provisions in the DMCS. The Commission invited interested parties to comment and participate in the proceeding. 52 FR 18498-18533. Many comments were filed; additionally, 62 intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held three sets of formal hearings, receiving testimony from 116 witnesses. In addition to oral argument, interested parties submitted briefs and reply briefs.

In addition to the changes in rates, Docket No. R87-1 resulted in a number of changes in the classification system governing the provision of postal services. Many of these changes are not substantive, but rather reflect changes in editorial style or make possible the elimination of references to situations described in the DMCS as prospective but which already have occurred. Additionally, changes have been made with regard to the provisions for second class which conforms the classification to statutory amendments (Pub. L. 99-272 section 15104).

A number of the classification changes are substantive. Among the substantive classification changes are: Addition of an Express Mail letter rate, addition of second-day Express Mail service, simplification of the Express Mail rate schedule by eliminating zone-related charges, permitting flexibility with regard to available pickup service and guaranteed delivery time for Express Mail, discount for presorted ZIP + 4 pre-barcoded First-Class letters, additional presort discounts for First Class, nonadvertising incentive added for nonprofit and classroom second-class mail, calculating allowable sample and complimentary copies of second class by pieces rather than weight, ZIP + 4 and pre-barcode discount options for bulk third class, extension of availability of work sharing discounts to nonprofit bulk third class, greater flexibility permitted for mailer preparation requirements for bulk bound printed matter, discount for pre-barcoded business reply with advance deposit, return receipt for merchandise as a stand-alone service, elimination of embossing requirement for stamped envelopes, and elimination of the requirement that annual fees be paid on a calendar year basis.

The amendments to the DMCS which are published in this order reflect the Governors' March 22, 1988, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURES

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

List of Changes

2. The following changes in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.68) of the Commission's rules of practice and procedure are adopted:

Appendix A to Subpart C—[Amended]

In the Table of Contents for Appendix A:

Remove "Classification Schedule SS–7- Dead Mail Return Service [Section Deleted]"

Revise "LOCKBOX SERVICE" in title of Classification Schedule SS–10 to read "POST OFFICE BOX SERVICE".

Remove current footnotes 1, 2, 3, 4 and 5.

Revise 100.010 to read as follows:

100.010 Any matter eligible for mailing may, at the option of the mailer, be mailed as First-Class Mail.

Revise 100.020 to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.021, 100.0211, 100.022, 100.0221, or 100.023.

Revise 100.0202 to read as follows:

100.0202 Presorted Mail

Presorted First-Class Mail is First-Class Mail other than Priority Mail which is presented in a single mailing of 500 or more pieces, properly prepared and presorted.

Add new 100.0203 to read s follows:

100.0203 Pre-barcoded ZIP+4 Presorted Mail

Pre-barcoded ZIP+4 presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to five-digit ZIP Codes, which meets the machinability, address readability and barcoding specifications of the Postal Service and which meets the preparation requirements in section 100.047.

Revise 100.023 to read as follows:

100.023 Priority Mail

Priority Mail consists of (1) First-Class Mail weighing more than the maximum weight established for regular First-Class Mail and (2) other mail matter (including First Class) which, at the option of the mailer, is mailed for expeditious mailing and transportation. Priority Mail may weigh up to and including 70 pounds.

Revise 100.032 to read as follows:

100.032 First-Class Mail which weighs one ounce or less is nonstandard mail if:

a. Its aspect ratio does not fall between 1 to 1.3 and 1 to 2.5 inclusive, or

b. It exceeds any of the following dimensions:

i. 11.5 inches in length,

ii. 6.125 inches in width, or

iii. .25 inch in thickness.

Revise 100.041 to read as follows:

100.041 First-Class Mail mailed under section 100.0202 must be presorted in accordance with regulations prescribed by the Postal Service.

Revise 100.042 to read as follows:

100.042 First-Class Mail mailed under section 100.0202 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

Revise 100.047 to read as follows:

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, and 100.0211 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded ZIP+4 presorted mail rates must be properly prepared and presorted as prescribed by the Postal Service.

Revise 100.050 to read as follows:

100.050 First-Class Mail must be deposited at places designated by the Postal Service.

Revise 100.060 to read as follows:

100.060 First-Class Mail receives expeditious handling and transportation, except that when First-Class Mail is attached to or enclosed with mail of another class, the service of that class applies.

Revise 100.070 to read as follows:

100.070 First-Class Mail is forwarded without additional charge.

Revise 100.071 to read as follows:

100.071 First-Class Mail that is undeliverable as addressed is returned to the sender, without additional charge.

Revise 100.080 to read as follows:

100.080 First-Class Mail, except as otherwise noted, will receive the following additional services upon payment of the appropriate fees:

	Classification schedule
a. Address correction	SS–1
b. Business reply mail (except ZIP + 4 rate category mail).	SS–2
c. Certificates of mailing	SS–4
d. Certified mail	SS–5
e. C.O.D.	SS–6
f. Insured mail	SS–9
g. Registered mail (except ZIP + 4 rate category mail).	SS–14
h. Special delivery	SS–17
i. Return receipt (Priority only)	SS–16
j. Merchandise return	SS–20

Revise 100.090 to read as follows:

100.090 The rates and fees for First-Class Mail are set forth in the following rate schedules:

	Rate schedule
a. Regular	100
b. Postal and post cards	100
c. Presorted	100
d. Priority Mail	103
e. Fees	1000

Amend 100.091 to read as follows:

100.091 Postage on First-Class Mail is computed separately on each piece of mail.

Amend 100.100 to read as follows:

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP + 4 rate category mail and prebarcoded ZIP + 4 presorted mail.

Revise 200.0107 to read as follows:

200.0107 Second-class matter published by an institution or society identified in sections 200.0106 h through k, may contain advertising of other persons, institutions, or concerns, only under the following conditions:

a. The publication must be originated and published to further the objectives and purposes of the society;

b. Circulation must be limited to:

i. Copies mailed to members who pay either as a part of their dues or assessment or otherwise, not less than 50 percent of the regular subscription price;

ii. Other actual subscribers;

iii. Exchanges.

c. The circulation of nonsubscriber copies,[1] including sample and complimentary copies, is limited to 10 percent of the total number of copies referred to in b.

Remove the following sentence in 200.0110f and make the ending punctuation of 200.0110f a semi-colon:

Editor's Note: The change in the method of determining the 10 percent sample copy allowance (from weight to number of pieces) becomes effective January 1, 1989.

This subsection will not be effective prior to March 20, 1982:

Revise 200.0201 to read as follows:

200.0201 Regular

Regular second-class mail is all second-class mail except that to which section 200.021 applies.

a. Regular second-class may be mailed only by publishers or registered news agents.

b. Nonsubscriber and nonrequester copies, including sample and complimentary copies, mailed at any time during the calendar year up to 10 percent of the total number of copies [1] mailed to subscribers and requesters during the calendar year are regular second-class mail provided that the nonsubscriber and nonrequester copies would have been regular second-class mail if mailed to subscribers or requesters. See section 200.093 for mailings in excess of the 10 percent limitation.

Renumber current 200.02111 to become 200.02112.

Add a new 200.02111 as follows:

200.02111 To qualify as within-county second class, one of the following conditions must be met:

a. The total paid circulation of the issue is less than 10,000 copies; or

b. The number of paid copies of the issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

Remove current 200.0215, which is titled Limited Circulation.

Renumber current 200.0216 to become 200.0215.

Renumber and amend current 200.0217 as 200.0216 to read as follows:

200.0216 Nonsubscriber copies, including sample and complimentary copies,[1] mailed at any time during the calendar year up to 10 percent of the total number of copies mailed to subscribers during the calendar year are preferred mail, provided that the nonsubscriber copies would have been preferred mail if mailed to subscribers. See section 200.093 for mailing in excess of the 10 percent limitation.

For §§ 200.0211, 200.0212, and 200.0213, expedited second-class mail is available without additional charge, but only to publications that issue weekly, or more frequently, and consist of news of general interest.

[1] **Editor's Note:** The change in the method of determining the 10 percent sample copy allowance (from weight to number of pieces) becomes effective January 1, 1989.

Revise 200.044 to read as follows:

200.044 Nonsubscriber and nonrequester copies, including sample and complimentary copies, must be identified as required by the Postal Service.

Revise 200.090 to read as follows:

200.090 The rates and fees for second-class mail are set forth as follows:

	Rate schedule
a. Regular	200
b. Within County	201
c. Nonprofit	202
d. Classroom	203
e. Science of Agriculture	200
f. Fees	1000

Revise 200.093 to read as follows:

200.093 Nonsubscriber and nonrequester copies, including sample and complimentary copies,[1] of any second-class mail mailed at any time during the calendar year, in excess of 10 percent of the total number of copies mailed to subscribers or requesters during the calendar year which are presorted and commingled with subscriber or requester copies are charged the full rates for regular second-class shown in Rate Schedule 200. The 10 percent limitation for a publication shall be based on the total number of all copies of that publication mailed to subscribers and requesters during the calendar year, subject to section 200.0216.

Revise 200.094 to read as follows:

200.094 Copies of any second-class mail which are destined for delivery within the sectional center area in which they are entered qualify for the applicable SCF discount as set forth in Rate Schedules 200, 202, and 203. The sectional center areas will be prescribed by the Postal Service.

Renumber current 300.0231 and 300.0232 to become 300.0232 and 300.0235.

Add a new 300.0231 to read as follows:

300.0231 Required Sortation, ZIP + 4 Coded Mail

Required sortation, ZIP + 4 coded mail is mail mailed under section 300.0230 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

Add new 300.0233 and 300.0234 to read as follows:

30.0233 Five-Digit Presort Level, ZIP + 4 Coded Mail

Five-digit presort level, ZIP + 4 coded mail is mail mailed under section 300.0232 whose address contains the ZIP + 4 code and which meets the machinability, address readability and other preparation requirements prescribed by the Postal Service.

300.0234 Five-Digit Presort Level, ZIP + 4 Pre-barcoded Mail

Five-digit presort level, ZIP + 4 pre-barcoded mail is mail mailed under section 300.0232 which is ZIP + 4 pre-barcoded and which meets the machinability and other preparation requirements prescribed by the Postal Service.

Revise 300.080 to read as follows:

300.080 Third-class single-piece mail will receive the following services upon payment of the appropriate fees:

	Classification schedule
a. Address Correction	SS-1
b. Certificates of mailing	SS-4
c. C.O.D.	SS-6
d. Insured mail	SS-9
e. Special delivery	SS-17
f. Special handling	SS-18
g. Return receipt (merchandise only).	SS-16
h. Merchandise return	SS-20

Revise 300. 100 to read as follows:

Revise 300.100 A mailing fee as set forth in Rate Schedule 1000 must be paid once each year by mailers of third-class bulk mail.

Revise 400.0203 to read as follows:

400.0203 Intra-BMC Parcel Post Mail

Parcel post mail is eligible for the intra-BMC rate described in rate schedule 400 if it originates and destinates in the same BMC or ASF service area, Alaska, Hawaii or Puerto Rico.

Revise 400.021h to read as follows:

* * * * *

h. Printed educational reference charts, including but not limited to (i) mathematical tables, (ii) botanical tables, (iii) zoological tables, and (iv) maps produced primarily for educational reference purposes.

* * * * *

Revise 400.0232 to read as follows:

400.0232 Bulk

Bulk bound printed matter mail is fourth-class bound printed matter mail consisting of properly prepared and presorted mailings of not less than 300 pieces prepared and presented in accordance with Postal Service regulations.

Revise 400.046 to read as follows:

400.046 Fourth-class pieces which are not identical in size and weight may be mailed in accordance with sections 400.0202, 400.0212 and 400.0232 only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

Revise 400.080 to read as follows:

400.080 Fourth-class mail will receive the following additional services upon payment of the appropriate fees:

	Classification Schedule
a. Address correction	SS–1
b. Certificates of mailing	SS–4
c. C.O.D.	SS–6
d. Insured mail	SS–9
e. Special delivery	SS–17
f. Special handling	SS–18
g. Return receipts (parcel post only).	SS–16
h. Merchandise return	SS–20

Revise 400.090 to read as follows:

400.090 The rates and fees for fouth-class mail are set forth as follow:

	Rate schedule
a. Single-piece parcel post mail	400
b. Bulk parcel post mail	400
c. Single-piece special fourth-class mail	402
d. Special fourth-class presorted mail	402
e. Library mail	402
f. Single-piece bound printed matter	405
g. Bulk bound printed matter	406
h. Fees	1000

Revise 400.10 to read as follows:

400.10 Authorizations and licenses

400.10 A presort mailing fee as set forth in Rate Schedule 1000 muist be paid once each year at each office of mailing by or for any person who mails presorted special fourth-class mail. Any person who engages a business concern or other individuals to mail presorted special fourth-class mail must pay the fee.

Revise 500.0212 to read as follows:

500.0212 Pickup at the mailer's premises, and/or delivery at an address other than the destination postal facility is provided under terms and conditions as prescribed by the Postal Service.

Revise 500.022 to read as follows:

500.022 Next Day Service and Second Day Service

500.0221 Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times prescribed by the Postal Service.

500.0222 Next Day Service is available for overnight delivery.

500.0223 Second Day Service is available for second day delivery.

500.0224 Pickup service is available for Next Day and Second Day Services under terms and conditions as prescribed by the Postal Service. Service shall be offered in a manner consistent with 39 U.S.C. 403(c).

Revise 500.047 to read as follows:

500.047 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Next Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the next delivery day in the case of Post Office-to-Addressee service.

Add new 500.048 to read as follows:

500.048 Unless the item was delayed by strike or work stoppage, the Postal Service will refund postage for Second Day Express Mail not available for claim or not delivered:

a. By 10:00 a.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Post Office service;

b. By 3:00 p.m., or earlier time(s) prescribed by the Postal Service, of the second delivery day in the case of Post Office-to-Addressee service.

Revise 500.080 to read as follows:

500.080 The rates for Express Mail are set forth in the following rate schedules:

	Rate schedule
a. Same Day Airport	500
b. Custom Designed	501
c. Next Day Post Office-to-Post Office	502
d. Second Day Post Office-to-Post Office	502
e. Next Day Post Office-to-Addressee	503
f. Second Day Post Office-to-Addressee	503

Revise 1.020 to read as follows:

1.020 Address correction service is available to mailers of postage prepaid mail of all classes. Second-class mail will receive address correction service.

Revise 1.030 to read as follows:

1.030 Mail, other than second class, sent under this classification schedule must bear a request for address correction service.

Revise 2.042 to read as follows:

2.042 An accounting fee as set forth in Rate Schedule SS–2 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

Revise 3.030 to read as follows:

3.030 Fees for caller service are set forth in Rate Schedule SS–10.

Revise Classification Schedule SS–10 to read as follows:

CLASSIFICATION SCHEDULE SS–10—POST OFFICE BOX SERVICE

10.01 Definition

10.010 Post office box service is a service which provides the customer with a private, locked receptacle for the receipt of his mail during the hours when the lobby of a postal facility is open.

10.02 Description of Service

10.020 The Postal Service may limit the number of post office boxes occupied by any one customer.

10.021 A post office box holder may request the Postal Service to deliver all mail properly addressed to him through the post office box. If the post office box is located at the post office indicated on the piece, it will be transferred without additional charge, in accordance with existing regulations.

10.022 Post office box service cannot be used when the sole purpose is, by subsequently filing change of address orders, to have mail forwarded or transferred to another address by the Postal Service free of charge.

10.03 Fees

10.030 Fees for post office box service are set forth in Rate Schedule SS–10.

10.031 In postal facilities primarily serving academic institutions or the students of such institutions, periods of rental and fees for post office boxes are:

Period for box rentals	Fee
95 days or less	½ semi-annual fee.
96 to 140 days	¾ semi-annual fee.
141 to 190 days	Full semi-annual fee.
191 to 230 days	1¼ semi-annual fee.
231 to 270 days	1½ semi-annual fee.
271 days to full year	Full annual fee.

10.032 No refunds will be made for boxes rented under section 10.031. For purposes of this classification schedule SS–10, the full annual fee is twice the amount of the semi-annual fee.

Revise 14.060 to read as follows:

14.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of applicable fees:

	Classification schedule
a. Collect on delivery	SS–6
b. Restricted delivery	SS–15
c. Return receipt	SS–16
d. Special delivery	SS–17
e. Merchandise return (shippers only)	SS–20

Revise 16.020 to read as follows:

16.020 Return receipt service is available for mail sent under the following classification schedules:

	Classification schedule
a. Certified mail	SS–5
b. C.O.D. mail	SS–6
c. Insured mail if insured for more than $50.	SS–9
d. Registered mail	SS–14
e. Express Mail	500
f. First Class (Priority Mail only)	100
g. Third class (merchandise only).	300
h. Fourth class (parcel post only).	400

Revise 18.060 to read as follows:

18.060 The following services may be obtained in conjunction with mail sent under this classification schedule upon payment of the applicable fees:

	Classification schedule
a. C.O.D. mail	SS–6
b. Insured mail	SS–9
c. Parcel airlift	SS–13
d. Merchandise return (shippers only).	SS–20

Revise 19.010 to read as follows:

19.010 Plain stamped envelopes and printed stamped envelopes are envelopes with postage thereon offered for sale by the Postal Service.

Revise 20.040 to read as follows:

20.040 The following services may be purchased in conjunction with Merchandise Return Service:

	Classification schedule
a. Certificate of mailing	SS–4
b. Insured Mail	SS–9
c. Registered mail	SS–14
d. Special handling	SS–18

Revise 1000.010 to read as follows:

1000.010 The Postal Service provides the following modes of delivery:

a. Caller service. The fees for caller service are set forth in Rate Schedule SS–10.

b. Carrier delivery service.

c. General delivery.

d. Lockbox service. The fees for lockbox service are set forth in Rate Schedule SS–10.

Revise 6000.011 to read as follows:

6000.011 The following minimum size standards apply to all mailable matter: (1) All items must be at least 0.007 inches thick, and (2) all items, other than keys and identification devices, which are 0.25 inch thick or less must be (a) rectangular in shape, (b) at least 3.5 inches in width, and (c) at least 5 inches in length.

Revise rate schedule 100 to read as follows:

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail type	Postage rate unit	Rate		
		Regular (cents)	Presorted [1] (cents)	
			5-digit	Carrier route
Letters	First ounce		*	*
	Each add'l ounce [2]			
Cards	Piece			
ZIP + 4 Mail [3]				
Letters	First ounce			
	Pre-barcoded			
	Each add'l ounce [2]			
Cards	Piece			
	Pre-barcoded			
Nonstandard Surcharge [4]				

* For presorted weighing more than 2 ounces, subtract cents per piece.

[1] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $ must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Rate applies through 11 ounces. Heavier pieces are subject to priority mail rates.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Applies to the first ounce only. Not applicable to ZIP + 4 mail.

Revise rate schedule 200 to read as follows:

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rates [1] (cents)
Per Pound:		
Non-advertising portion:	Pound	
Advertising portion:		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Science of Agriculture:		
Zone: 1 and 2	Pound	
Per Piece: Less Editorial Factor of		per each 1% Editorial Content [2]
A—Prepared [3]	Piece	
B—Presorted to 3-digit city/5-digit.	Piece	
C—Carrier route Presort.	Piece	

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS, OUTSIDE COUNTY—Continued

	Postage rate unit	Rates [1] (cents)
SCF Discount [4]		

[1] Charges for second-class regular rate mail are computed by adding the appropriate per-piece charge, including editorial factor, to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.
[3] Presorted to 3-digit (other than 3-digit city), States, Mixed States.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece rate.

Revise rate schedule 202 to read as follows:

RATE SCHEDULE 202—FULL RATES SECOND-CLASS MAIL: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per Pound:		
Non-advertising portion.	Pound	
Advertising portion: [2]		
Zone:		
1 and 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per Piece: Less Editorial Factor of 1% Editorial Content.[3]	per each.	
Category A: Prepared i.e. Presorted to 3-digits (except 3-digit city), States, mixed States.		
Category B: Presorted to 3-digit city/5-digit.		
Category C: Carrier Route Presort.		
SCF Discount.[4]		

[1] Charges for second-class nonprofit mail are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] Not applicable to publications containing 10 percent or less advertising content.
[3] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece charge.
[4] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Revise rate schedule 203 to read as follows:

RATE SCHEDULE 203—FULL RATES, SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS, OUTSIDE COUNTY

	Postage rate unit	Rate [1] (cents)
Per pound:		
Nonadvertising portion.	Pound	
Advertising portion:		
Zone:		
1 & 2	Pound	
3	Pound	
4	Pound	
5	Pound	
6	Pound	
7	Pound	
8	Pound	
Per piece: Less editorial factor of 1 percent editorial content [2].	Per each.	
SCF discount [3]	Piece	

[1] Charges for classroom publications are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] For postage calculation, multiply the editorial percent content by and subtract from the applicable piece rate.
[3] Applies to mail destinating in the originating SCF area. The discount is subtracted from the applicable piece charge.

Remove rate schedules 204, 205, 206 and 207.

Revise rate schedule 301 to read as follows:

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK

	Full rates (cents)
Regular bulk: [1]	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	

RATE SCHEDULE 301—THIRD-CLASS MAIL: REGULAR BULK—Continued

	Full rates (cents)
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus.	(per piece)
Presorted to five-digits ¢ per pound plus.	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebarcoded and presorted to five-digits.	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

Revise rate schedule 302 to read as follows:

RATE SCHEDULE 302—FULL RATES, THIRD-CLASS: NONPROFIT-BULK MAIL

	Full rates (cents)
Nonprofit bulk: [1]	
Miminum per piece:	
Required presortation	
Presorted to five-digits	
Presorted to carrier route	
Pound rate:	
Carrier route pieces	(per pound)
Required presortation ¢ per pound plus.	(per piece)
Presorted to five-digits ¢ per pound plus.	(per piece)
ZIP + 4 mail:	
Minimum per piece:	
Required presortation	
Presorted to five-digits	
Prebarcoded and presorted to five-digits.	

[1] A fee of $ must be paid once each year for each bulk mailing permit.

Amend rate schedule 402 by removing "calendar" in footnote one and removing "(§ 400.331a(1) of the Classification Schedule effective July 6, 1976)." in footnote 2.

Amend rate schedule 405 by deleting "(§ 400.41 of the Classification Schedule effective July 6, 1976)" in footnote 1.

Revise rate schedules 500, 501, 502 and 503 to read as follows:

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
½				
1				
2				
3				

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES—Continued

[Dollars]

Postage rate unit (pounds)	Schedule 500 same day airport service	Schedule 501 custom designed	Schedule 502 next day and second day PO to PO	Schedule 503 next day and second day PO to Addressee
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
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70				
Add:				
$4.00 for each pickup stop.				
$4.00 for each custom designed delivery stop.				

Revise rate schedule SS–2 to read as follows:

SCHEDULE SS–2.—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fee
Active business reply advance deposit account:	
Per piece	
Pre-barcoded	
Other	
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	
Annual License and Accounting Fees:	
With Advance Deposit Account	
Without Advance Deposit Account	

Revised rate schedule SS–4 to read as follows:

SCHEDULE SS–4.—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fee (in addition to postage)
Individual Pieces:	
Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece).	
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece).	
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy).	
Bulk Pieces:	
Identical pieces of First- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:.	
Up to 1,000 pieces (one certificate for total number).	
Each additional 1,000 pieces or fraction.	
Duplicate copy	

SCHEDULE SS–4.—SPECIAL SERVICES: CERTIFICATES OF MAILING—Continued

Remove Schedule SS–7 which is titled Special Service: Dead Letter Return

Revise rate schedule SS–8 to read as follows:

SCHEDULE SS–8.—SPECIAL SERVICES: MONEY ORDERS

Amount	Fee
Domestic:	
$0.01 to $35	
35.01 to 700	
APO–FPO:	
$0.01 to $700	
Inquiry Fee, which includes the issuance of copy of a paid money order.	

Revise rate schedule SS–9 to read as follows:

SCHEDULE SS–9.—SPECIAL SERVICES: INSURED MAIL

Liability	Fee (in addition to postage)
$0.01 to $ 50	
50.01 to 100	
100.01 to 150	
150.01 to 200	
200.01 to 300	
300.01 to 400	
400.01 to 500	

Revise rate schedule SS–10 to read as follows:

SCHEDULE SS–10—SPECIAL SERVICES: POST OFFICE BOXES AND CALLER SERVICE

A. Semi-annual rental rates for post office boxes. Capacity of post office box (in cubic inches)	To 296	296 to 499	500 to 999	1000 to 1,999	Over 2,000
Box size	1	2	3	4	5
Group I					
Group II					
Group III [1]					

[1] Payment on annual basis.

B. Caller Service.

Description	Fee
For caller service (semi-annual)	
For each reserved	
Call number (annual)	

Revise rate schedule SS–11b to read as follows:

SCHEDULE SS–11b.—Special Services: Correction of Mailing Lists

Description	Fee
Per submitted address	
Minimum charge per list corrected	

Revise rate schedule SS–12 to read as follows:

SCHEDULE SS–12.—SPECIAL SERVICES: ON-SITE METER SETTING

Description	Fee
Onsite meter settings:	
First meter:	
By appointment	
Unscheduled request	
Additional meters	
Checking meter in or out of service per meter	

Revise rate schedule SS.–16 to read as follows:

SCHEDULE SS–16—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fee (in addition to postage)
Requested at time of mailing:	
Showing to whom (signature) and date delivered	
Without another special service-merchandise only	
Showing to whom (signature) and date and address where delivered	
Without another special service-merchandise only	
Requested after mailing: Showing to whom and date delivered	

Revise rate schedule SS–19 to read as follows:

SCHEDULE SS–19.—SPECIAL SERVICES: STAMPED ENVELOPES

Type	Fee
Single sale	
Bulk (500) #6¾ size:	
Regular	
Window	
Bulk (500) #10 size: [1]	
Regular	
Window	
Multicolor printing (500)	
#6¾ size	
#10 size [1]	
Printing charge per 500 envelopes: [2]	
Minimum order (500 envelopes)	
Order for 1,000 or more envelopes	
Double window (500) #10 size [1]	
Household (50) #6¾ size:	
Regular	
Window	
Household (50) #10 size: [1]	
Regular	
Window	

[1] Includes all sizes greater than #6¾ through #10.

[2] Printing charge for each type of printed envelope.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 88–9055 Filed 4–28–88; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 87; FRL–3370–3]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a revision to the New Jersey State Implementation Plan (SIP) for lead. This revision consists of material submitted by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to conduct studies and implement appropriate actions in order to provide for attainment and maintenance of the ambient air quality standard for lead in the vicinity of the United States Metals Refining Company (USMR) plant in the Borough of Carteret. The SIP revision states that all lead-emitting manufacturing operations at the facility have shut down. Among the actions being approved today are those to control fugitive dust emissions that might occur as a result of the demolition of buildings at the USMR plant site and a requirement to continue ambient air monitoring for lead in the vicinity of the facility until at least August of 1989.

DATES: This action will be effective May 31, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1986 (51 FR 42565) the Environmental Protection Agency (EPA) approved, with the exception of the Borough of Carteret, the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for lead. As described in that notice, EPA was unable to take final action with respect to the Borough of Carteret because of the need for a revised control plan for a smelting facility located in the area, the United States Metals Refining Company (USMR). Even though stack and fugitive emission control requirements for the USMR facility were generally being complied with and modeling of these emission levels had shown them sufficient to provide for attainment of the lead standard in its vicinity, violations of the ambient lead standard continued to be monitored.

As a result, the New Jersey Department of Environmental Protection issued an Administrative Order to USMR requiring the development and implementation of a new control plan for the facility. However, while the contents of this plan were being negotiated, USMR announced its decision to shut down operations at all significant lead-emitting manufacturing sources on the site (a laboratory which is permitted to emit 0.015 tons per year of lead remains open) and to develop the property for other uses. As a consequence of this shut-down, which occurred in September of 1986, the facility's air pollution control permits were terminated by the State.

To meet its SIP commitment, on July 23, 1987 the State of New Jersey sent EPA a draft SIP revision for the USMR facility. It was requested that EPA conduct its approval process concurrent with the State's. Following this, New Jersey published a public announcement in the July 20, 1987 issue of the New Jersey Register to request comments on its SIP submittal. Finally, on September 25, 1987, New Jersey was able to submit to EPA its final, adopted SIP revision.

On October 8, 1987 (52 FR 37637), EPA published a **Federal Register** notice proposing approval of New Jersey's submittal. Only one comment was received on EPA's notice. Today's action finalizes that October 8, 1987 proposal concerning the adequacy and approvability of the New Jersey SIP for lead with respect to the USMR facility and the Borough of Carteret.

Public Comments

The one comment received during the public comment period established by EPA's October 8, 1987 proposal is summarized and discussed as follows.

Comment: The proposed SIP revision does not specifically tailor the cleanup efforts at the facility to the results of the ambient air monitoring. The SIP should provide for an aggressive assessment of the air monitoring results, with particular focus on the impact on surrounding communities, before cleanup is complete.

Response: The SIP revision requires USMR to provide notice to and gain approval from the New Jersey Department of Environmental Protection before any demolition activities take place. A representative from the State or from the Middlesex County Health Department will observe that the measures required to minimize wind blown dust are carried out. In addition, monitoring at the site will be continued until attainment of the ambient standards for lead has been demonstrated for two years. EPA found that this combination of on-site enforcement and continued monitoring is sufficient to protect the surrounding communities from the impact of wind blown dust.

Conclusion

Today's action proposes a revision to the New Jersey lead SIP pertaining to the Borough of Carteret. It expressly incorporates the control strategies implemented by USMR and the

monitoring commitment made by the State into this SIP. This revision has been found to fulfill the commitment made by New Jersey in its lead SIP to study the facility and implement appropriate control measures. The control strategy outlined in today's notice may only be revised by appropriate procedures under the Clean Air Act. With the publication of this notice, the New Jersey SIP for lead is now complete for the entire State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307 (b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307 (b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Date: April 18, 1988.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart FF—New Jersey

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1570 paragraph (c) is amended by adding new paragraph (c)(42) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(42) A revision to the New Jersey State Implementation Plan (SIP) for lead submitted on July 23, 1987 by the New Jersey Department of Environmental Protection (NJDEP) and finalized on September 25, 1987.

(i) Incorporated by reference:

(A) A March 4, 1986 Administrative Order and Notice of Civil Administrative Penalty Assessment (Log # A860244) from the New Jersey Department of Environmental Protection to the United States Metals Refining Company (USMR).

(B) Letter of March 11, 1987 from Greenberg and Prior, attorneys for USMR, to Anthony J. McMahon, Department of Environmental Protection, Trenton, New Jersey.

(ii) Additional material:

(A) July 1987 Modeling Analysis for the Anchor Abrasives facility.

(B) Summary of public comments and response to comments for the revision of the N.J. SIP for lead in the vicinity of USMR.

(C) USMR's comments on the revised N.J. SIP for lead in the vicinity of USMR.

[FR Doc. 88–9235 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6787]

List of Communities Eligible for the Sale of Flood Insurance; Alabama et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: See table below.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Alabama	Jasper, city of	Walker	010206	Mar. 4, 1988, suspension withdrawn.
Do	Unincorporated areas	Jefferson	010217	Do.
Do	Lincoln, city of	Talladega	010198	Do.
Do	Livingston, city of	Sumter	010195	Do.
Do	Unincorporated areas	Lowndes	010272	Do.
Do	....do	Macon	010148	Do.
Do	....do	Madison	010151	Do.
Do	....do	Mobile	015008	Do.
Florida	Fort Meade, city of	Polk	120264	Do.
Do	Unincorporated areas	Franklin	120088	Do.
Do	....do	Flagler	120085	Do.
Do	Holly Hill, city of	Volusia	125112	Do.
Do	Inglis, city of	Levy	120586	Do.
Do	Interlachen, city of	Putnam	120391	Do.
Do	Jupiter Inlet Colony, city of	Palm Beach	125120	Do.
Do	Juno Beach, city of	Palm Beach	120208	Do.
Do	Unincorporated areas	Monroe	125129	Do.
Do	....do	Palm Beach	120192	Do.
Do	....do	Polk	120261	Do.
Do	....do	Highland	120111	Do.
Do	Sanibel, city of	Lee	120402	Do.
Do	South Daytona, city of	Volusia	120314	Do.
North Carolina	Caswell Beach, town of	Brunswick	370391	Do.
Do	Emerald Isle, town of	Carteret	370047	Do.
Do	Unincorporated areas	New Hanover	370168	Do.
Do	Indian Beach, town of	Carteret	470433	Do.
Do	Tabor City, town of	Columbus	370070	Do.
South Carolina	Pendleton, town of	Anderson	450019	Do.
Do	Unincorporated areas	Pickens	450166	Do.
Do	Pickens, town of	Pickens	450169	Do.
Do	Pine Ridge, town of	Lexington	450136	Do.
Do	York, town of	York	450197	Do.
Tennessee	Lebanon, city of	Wilson	470208	Do.
Do	Unincorporated areas	Madison	470112	Do.
Do	Maryville, city of	Blount	475439	Do.
Do	Memphis, city of	Shelby	470177	Do.
Do	Milan, city of	Gibson	470060	Do.
Do	Millington, city of	Shelby	470178	Do.
Do	Morristown, city of	Gibson	470060	Do.
Do	Unincorporated areas	Nashville-Davidson	470040	Do.
Do	Rossville, town of	Fayette	470050	Do.
Do	Unincorporated areas	Shelby	470214	Do.
Do	South Fulton, city of	Obion	475446	Do.
Do	Trenton, city of	Gibson	470062	Do.
Do	Tullahoma, city of	Coffee and Franklin	470036	Do.
Do	Union City, city of	Obion	470142	Do.
Do	Watertown, city of	Wilson	470380	Do.
North Carolina	Andrews, town of	Cherokee	370060	Mar. 16, 1988 suspension withdrawn.
Do	Asheville, city of	Buncombe	370032	Do.
Do	Unincorporated areas	Avery	370010	Do.
Do	Blowing Rock, town of	Watauga	370252	Do.
Do	Dillsboro, town of	Jackson	370136	Do.
Do	Elk Park, town of	Avery	370382	Do.
Do	Unincorporated areas	Graham	370105	Do.
Do	....do	Madison	370152	Do.
Do	....do	Madison	380152	Do.
Do	Marshall, town of	Madison	370154	Do.
Do	Sylva, town of	Jackson	370137	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: April 25, 1988.

[FR Doc. 88-9493 Filed 4-28-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 88-39]

Emergency Broadcast System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The revised rules change outdated and obsolete terms concerning the Emergency Broadcast System (EBS). Continued use of the outdated nomenclature causes confusion.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Frank Lucia, (202) 632-3906, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Order

Adopted: January 29, 1988.
Released: February 18, 1988.
By the Commission.

1. The Commission has determined that Part 73, Subpart G contains many outdated and absolete terms concerning the Emergency Broadcast System (EBS). Continued use of the outdated nomenclature causes confusion.

2. Terms such as "National Industry Advisory Committee (NIAC) Orders", "Basic EBS Plan", and "500" Net are obsolete. The NIAC wsa disestablished by the Commission in 1986 and replaced by two new committees: The National Security and Emergency Preparedness (NSEP) Advisory Committee and the Emergency Broadcast System (EBS) Advisory Committee. Also in 1986, the National level "500" and "300" networks and the Presidential Audio Line through Radio Station WTOP(AM) were replaced by the new Emergency Action Notification (EAN) Network. Moreover, the rules have been updated to recognize that additional entities (e.g., cable systems and program suppliers) are voluntarily participating in EBS.

3. Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules *is amended*, as set forth below, effective May 31, 1988.

4. For further information concerning this action, contact the Management Planning and Program Evaluation Office at (202) 632-3906.

5. The Commission finds for good cause that prior notice and comment procedures are unnecessary. See 5 U.S.C. 553(b)(B). These amendments merely update our rules by eliminating obsolete nomenclature and recognize that additional entities are voluntarily participating in EBS. Thus, no purpose would be served by soliciting the comments of the public.

Federal Communications Commission.

H. Walker Feaster,

Acting Secretary.

Pursuant to the authority contained in sections 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended, Title 47 of the Code of Federal Regulations, Part 73, is amended.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.909 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 73.909 Standard Operating Procedures (SOPs).

The SOPs are issued by the FCC and contain detailed operational instructions which are used for activating, terminating and testing the National level EBS. They are issued to specified control points of the national radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations.

* * * * *

(c) SOP-3, the National Information Center. This SOP contains the detailed operational and authentication procedures for the distribution of United States Government national releases and official information.

3. Section 73.910 is revised to read as follows:

§ 73.910 Authenticator word lists.

The Authenticator word lists are issued by the FCC annually. These include the Red and White envelopes and the National Information Center (NIC) booklet. The lists are used in conjunction with procedures contained in the EBS Checklists and SOPs for tests or actual National emergency situations.

(a) *EBS Authenticator List—Red Envelope.* This document is used for authentication purposes in conjunction with the procedures contained in the EBS Checklists and the Standard Operating Procedures (SOPs) 1 and 2. It is issued to all broadcast stations and specified control points (national radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations).

(b) *EBS Authenticator List—White Envelope.* This document is used for caller identification purposes in conjunction with the Last Resort procedures in SOP-1 and SOP-2, and is issued to the above specified control points.

(c) *NIC Authenticator List—Booklet.* This document is used for authentication purposes in conjunction with the procedures contained in SOP-3. It is issued to participating control points.

§ 73.911 [Removed]

4. Section 73.911 is removed.

5. Section 73.912 is revised to read as follows:

§ 73.912 Emergency Broadcast System participants.

The following non-government industry entities voluntarily participate in the Emergency Broadcast System (EBS):

(a) *Radio and Television Networks.*

(1) ABC Radio and ABC-TV.
(2) Associated Press Radio (APR).
(3) CBS Radio and CBS-TV.
(4) Mutual Broadcasting System (MBS).
(5) MUZAK.
(6) NBC Radio.
(7) NBC-TV.
(8) National Public Radio (NPR).
(9) Public Broadcasting Service (PBS-TV).
(10) Satellite Music Network.
(11) Transtar.
(12) United Press International Audio (UPIA).
(13) United Stations.

(b) *Cable Systems and Program Suppliers.*

(1) Cable News Network (CNN).
(2) Christian Broadcasting Network (CBN).
(3) Disney Channel.
(4) Entertainment and Sports Programming Network (ESPN).
(5) Movie Channel.
(6) MTV.
(7) Nashville Network.
(8) Nickelodean.
(9) Showtime.
(10) VH-1.

(c) *Wire Services.*

(1) Associated Press (AP).
(2) United Press International (UPI).

(d) *Common Carriers.*

(1) American Telephone and Telegraph (AT&T).

6. Section 73.918 is amended by adding the following text at the end of the section:

§ 73.918 Non-participating Station (Non-EBS).

* * * This is a broadcast station which has elected not to participate in the National level EBS and does not hold an EBS Authorization. Upon activation of the EBS at the National level, such stations are required to broadcast the EBS Attention Signal and the appropriate EBS message, then remove their carriers from the air and monitor for the Emergency Action Termination in accordance with the instructions in the EBS Checklist for Non-participating Stations. All broadcast stations (including Non-Participating Stations) are required to comply with § 73.932.

7. Section 73.922 is amended by revising paragraph (c) as follows:

§ 73.922 Emergency Broadcast System programming priorities.

* * * * *

(c) During a national emergency the radio and television (aural) broadcast network program distribution facilities shall be reserved exclusively for distribution of Presidential Messages and National Information. National Information which is not broadcast at the time of original transmission shall be recorded locally by the CPCS stations for broadcast at the earliest opportunity consistent with Operational (Local) Area requirements.

8. Section 73.926 is amended by revising paragraph (c), removing paragraph (d) and redesignating paragraph (e) as paragraph (d) and revising it to read as follows:

§ 73.926 Participation in the Emergency Broadcast System.

* * * * *

(c) Any station may change its EBS status from Participating to Non-participating (see § 73.918) by giving 30 days written notice and by returning its EBS Authorization to the FCC.

(d) Any AM, FM, TV, or Low Power TV broadcast station or cable network or system may, at the discretion of management, voluntarily participate in the State level and Operational (Local) level EBS in accordance with the provisions of the State EBS Operational Plan. An EBS Authorization is not required.

9. Section 73.927 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 73.927 Participation by communications common carriers.

(a) Communications common carriers which have facilities available in place, may, without charge, connect an independent broadcast station to the radio and television (aural) broadcast networks or participating cable systems for the duration of the activation of the National level EBS; provided that the station has in service a local channel from the station's studio or transmitter directly to the broadcast source or a broadcast connection point.

(b) During the activation of the National level EBS, communications common carriers which have facilities in place may, without charge, connect an originating source from the nearest exchange to a selected Test Center and then to the radio and television (aural) broadcast networks and participating cable systems for the duration of the emergency: provided, that:

(1) The originating source has in service a local channel from the originating point to the nearest Exchange.

(2) An Emergency Action Notification is requested by the White House.

* * * * *

(d) During Closed Circuit Tests of the National level EBS, communications common carriers which have facilities in place may, without charge, connect an originating source from the nearest Exchange to a selected Test Center and then to the radio networks and any participating television networks and cable systems. No participating independent station may be connected during the test unless authorized by the FCC. Upon termination of the tests, all participating networks shall be restored to their original configuration.

* * * * *

10. The undesignated center heading preceding §§ 73.931–73.933 is revised; and § 73.931 is amended by revising paragraphs (a) introductory text, (a)(2) and (a)(3), adding paragraph (a)(4), and revising paragraphs (b) and (c) to read as follows:

Activation Actions

§ 73.931 Dissemination of Emergency Action Notification.

(a) *National level.* The Emergency Action Notification (EAN) will be released at this level upon request of the White House. The EAN message is disseminated from the origination point on a dedicated network to control points of the radio and television networks, participating cable systems and communications common carriers, the wire services, and other participating organizations. The EAN is then further disseminated as follows by:

* * * * *

(2) The wire services to all subscribers (AM, FM, TV, and Low Power TV and other stations).

(3) Off-the-air monitoring of AM, FM, TV, and Low Power TV broadcast stations and other licensees and regulated services.

(4) The participating cable systems to all subscribers.

* * * * *

(b) *State level.* The dissemination arrangements for the EAN at this level originate from the State and Federal government authorities in accordance with the State EBS Operational Plan.

(c) *Operational (Local) Area level.* The dissemination arrangements for the EAN at this level originate from local government authorities in accordance with the Local EBS Operation Plan.

* * * * *

11. Section 73.932 is amended by revising paragraphs (a) and (d)(1) to read as follows:

§ 73.932 Radio monitoring and Attention Signal transmission requirements.

(a) *Monitoring Requirements.* To insure effective off-the-air monitoring (§ 73.931(a)(3)), all broadcast station licensees must install and operate, during their hours of operation, equipment capable of receiving the Attention Signal and emergency programming by other radio or television stations. This equipment must be maintained in operative condition, including arrangements for human listening watch or automatic alarm devices. This equipment must be installed in the broadcast station, either at the transmitter control location and/or studio location, in such a way that it enables the broadcast station staff, at normal duty locations, to be alerted instantaneously upon the receipt of the attention signal and to immediately monitor the emergency programming. For situations where broadcast stations are co-owned and co-located (e.g. an AM and FM licensed to the same entity at the same location) with a combined studio facility, only one receiver is required if installed in the combined studio facility. The off-the-air signal monitoring assignment of each broadcast station is specified in the State EBS Operational Plan.

* * * * *

(d) * * *

(1) Appropriate entries must be made in the station log, indicating reasons why the Weekly Test Transmissions were not received. Weekly Transmissions of the Test Script, even without the encoder, must be conducted.

* * * * *

12. Section 73.933 is amended by revising paragraphs (b)(1) and (b)(2), adding paragraph (b)(5)(i)(*d*), and revising paragraph (b)(12) to read as follows:

§ 73.933 Emergency Broadcast System operation during a National Level emergency.

* * * * *

(b) * * *

(1) Monitor the radio and television networks, and/or the participating cable systems, for further instructions from the network control point.

(2) Check the wire services (AP/UPI). Verify the authenticity of the message with the current EBS Authenticator List (Red envelope).

* * * * *

(5) * * *

(i) * * *

(*d*) Participating cable networks and systems.

* * * * *

(12) Broadcast stations holding an EBS Authorization are specifically exempt from complying with §§ 73.62 and 73.1560 (pertaining to maintenance of operating power) while operating under this subpart of the rules.

* * * * *

13. Section 73.935 is amended by adding paragraph (c) to read as follows:

§ 73.935 Day-to-day emergencies posing a threat to the safety of life and property; State Level and Operational (Local) Area Level Emergency Action Notification.

* * * * *

(c) Cable networks and systems may voluntarily participate in the EBS in accordance with the provisions of the State EBS Operational Plan.

14. Section 73.936 is amended by revising paragraphs (d) introductory text and (d)(3) to read as follows:

§ 73.936 Emergency Broadcast System Operation during a State level emergency.

* * * * *

(d) Immediately upon receipt of a State level Emergency Action Notification, all licensees and cable networks and systems participating may at the discretion of management, proceed as follows:

* * * * *

(3) All licensees and cable networks and systems participating in the State level EBS shall discontinue normal programming and follow the transmission procedures set forth in the appropriate EBS Checklist and State EBS Operational Plan (§ 73.921) under the State and Local Level Instructions. Stations which provide foreign language programming may transmit emergency announcements in the foreign language prior to broadcasting such announcements in English. TV stations shall display an appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

15. Section 73.937 is amended by revising paragraphs (d) introductory text and (d)(3) to read as follows:

§ 73.937 Emergency Broadcast System operation during an Operational (Local) Area Level emergency.

* * * * *

(d) Immediately upon receipt of an Operational (Local) Area Level Emergency Action Notification message, all licensees and cable networks and systems participating may, at the discretion of management, proceed as follows:

* * * * *

(3) All licensees and cable networks and systems participating in the Operational (Local) Area level EBS shall discontinue normal programming and follow the transmission procedures set forth in the State and Local EBS Operational Plan. Stations which provide foreign language programming may transmit emergency announcements in the foreign language prior to broadcasting such announcements in English. TV stations shall display an appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

16. Section 73.942 is amended by revising paragraph (b) to read as follows:

§ 73.942 Acceptability of EBS Attention Signal equipment.

* * * * *

(b) A decoder device used for the detection of the EBS Attention Signal shall be certified following the applicable procedures set forth in Subpart J of Part 2 and Subpart B of Part 15 of the Rules and Regulations. This requirement shall also apply to decoders which are part of a broadcast receiver. The data and information submitted shall show capability of the equipment to meet the requirements of § 73.941.

17. Section 73.961 is amended by revising paragraph (a) and the heading of paragraph (b) to read as follows:

§ 73.961 Tests of the Emergency Broadcast System procedures.

(a) Weekly Emergency Action Notification (EAN) Network Transmissions. Test transmissions of the National level interconnection facilities will be conducted on a random basis once each week. The tests will originate on an alternate basis from one of two origination points over a dedicated government network to the control points of the radio and television networks, participating cable systems and common carriers, the wire services, and other participating organizations. These tests will be in accordance with the procedures set forth in EBS SOP–2 which is furnished to the non-government entities concerned.

(b) *Periodic Wire Service Test Transmissions.* * * *

* * * * *

18. Section 73.962 is amended by revising paragraphs (a), (c), (d), (e) introductory text, (e)(2), (e)(3) and (e)(6) to read as follows:

§ 73.962 Closed Circuit Tests of approved National level interconnecting systems and facilities of the Emergency Broadcast System.

(a) Tests of approved National level interconnecting systems and facilities of non-government entities voluntarily participating in the EBS will be conducted on a random or scheduled basis not more than once a month and not less than once every three months only after FCC approval. The time of the test will be selected by both the White House and participating industry personnel in coordination with the FCC. Unless a random Closed Circuit Test has been selected, the FCC will notify the networks, wire services and participating cable systems and common carriers of the selected time window, four working days (holidays excluded) prior to the test.

* * * * *

(c) The control points of the radio and television networks, the wire services and the participating cable systems and common carriers will receive notification of the Closed Circuit Tests by a "Closed Circuit Test Activation Message".

(d) The National level EBS will be tested on a closed circuit basis. These test broadcasts will originate from a point selected by the White House with program feed circuitry connected to the Telephone Company Toll Test Center at points coordinated for each test. Participating common carriers will interconnect, as required, the facilities of the radio networks and any other participants in the test. The telephone companies are not authorized to add any of the independent stations participating in the EBS unless authorized by FCC. Authentication will be provided to the Telephone Company Toll Test Center or other program entry location responsible for the particular test arrangements to be used. Authentication used in the Closed Circuit Test Message will be the test words printed on the outside of the EBS Authenticator List—Red Envelope.

(e) Closed Circuit Test procedures for radio network affiliates, wire service subscribers, and if participating, television network affiliates and cable systems are as follows:

* * * * *

(2) Immediately monitor your radio network (and if participating, your television or cable system) and check your wire service teletype machine for the receipt of the Closed Circuit Test Activation Message. Verify authenticity using the test words printed on the outside cover of the current issue of the EBS Authenticator List—Red Envelope.

(3) Continue to monitor your radio network (and if participating, your television network or cable system) for the audio talkup and the Closed Circuit Test audio program.

* * * * *

(6) Following the closing cue as indicated in paragraph (e)(5) of this section, wire service subscribers only will receive a "Closed Circuit Test Termination Message". Record the time of receipt of this message as indicated in paragraph (e)(4) of this section.

* * * * *

[FR Doc. 88-9391 Filed 4-28-88; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1160

[Ex Parte No. 55 (Sub-No. 68)]

Revised Procedures for Obtaining Copies of Motor Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

EFFECTIVE DATE: April 29, 1988.

SUMMARY: The Commission has revised its licensing regulations to adopt new procedures by which interested parties may request copies of applications. The amended rule at 49 CFR 1160.13 transfers responsibility for providing copies of the licensing application package from applicant's representative to a Commission-designated contract agent, Dynamic Concepts, Inc., upon written request and payment of the required fee by interested persons. This action will ensure more expeditious and straightforward processing of licensing applications.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275-7292 or, Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Under the revised rule set forth below, a Commission-designated contracting agent—presently, Dynamic Concepts, Inc.—will process all requests for copies of applications in motor carrier, water carrier, property broker, and household goods freight forwarder licensing proceedings. By channeling requests for application materials through a central information service, we have relieved applicants of any administrative inconvenience possibily associated with performing such functions and have provided persons generally interested in the application process with a uniform, simplified mechanism for obtaining the materials necessary to fully evaluate licensing requests. The $10 fee for duplicating, processing, and mailing application copies will remain constant under this new procedure.

Because the new rule represents a technical revision to Commission licensing regulations, formal notice and public comment procedures are not required to implement this change. Under 5 U.S.C. 553(b)(A), interpretive rules, general policy statements, and rules of agency organization, procedure, or practice are specifically exempted from the notice and comment requirements of the Administrative Procedure Act. The revised rule adopted here merely simplifies procedures and establishes a unified system for obtaining application copies without affecting in any regard the ability of interested parties to access such information. Thus, this action falls squarely within 5 U.S.C. 553(b)(A).

The revised rule also falls within the "good cause" exception of 5 U.S.C. 553(b)(B). That exception provides that notice and comment procedures are unnecessary where, as here, a rule change is minor and technical in nature and, ultimately, has no impact on the public.

Environmental and Energy Considerations

The revised rule will not affect significantly the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that this rule revision will not have a significant economic impact on a substantial number of small entities. To the extent that the amended rule relieves small applicants of duplicating and dissemination burdens, we anticipate that this action will have a positive impact on such entities. Similarly, we expect that the application process generally will be enhanced by the creation of a simple information clearinghouse for interested persons seeking information about pending licensing matters.

List of Subjects in 49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

Decided: April 21, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for 49 CFR Part 1160 continues to read:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

2. Part 1160 is amended by revising § 1160.13 to read as follows:

§ 1160.13 Furnishing a copy of the application package to interested persons.

After publication, interested persons may request a copy of the application. The request may be made by writing to the Commission-designated contract agent: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and must be accompanied by a check or money order for $10, payable to Dynamic Concepts, Inc., or may be made by contacting the contract agent at (202) 289-4357 [TDD for hearing impaired: (202) 275-1721] and arranging billing as acceptable to the agent.

[FR Doc. 88-9515 Filed 4-28-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations, as recently permitted by an amendment to 5 U.S.C. 3328, to delegate authority previously reserved to OPM to exceutive agencies to determine whether an individual's failure to register with the Selective Service System was knowing and willful. Under section 3328, persons who are required to register but do not, are ineligible for appointment to Federal executive agencies, unless they can prove that failure to register was neither knowing nor willful. As authorized by section 3328, on March 11, 1987, OPM published (at 52 FR 7399) final regulations to carry out the registration requirement.

DATES: Comments will be considered if received no later than May 31, 1988.

ADDRESS: Send or deliver written comments to Curtis J. Smith, Associate Directort, for Career Entry, Office of Personnel Management, Room 6F08, 1900 E. Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas F. O'Connor, (202) 653–9407.

SUPPLEMENTARY INFORMATION: Section 1249 of Pub. L. 100–180, approved December 14, 1987, amended section 3328, "Selective Service registration", of title 5, United States Code, to allow OPM to delegate decision-making authority to agencies. Section 3328 provides that men born in 1960 or later who are required to but did not register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) generally are ineligible for appointment to Federal executive agencies. A non-registrant who is not yet 26 years of age may correct his ineligibility by registering. After a non-registrant becomes 26 years of age or older, he can no longer register to correct his failure. In the latter situation, section 3328 originally authorized OPM alone to determine whether failure to register was knowing and willful. Section 1249 permits OPM to delegate the authority to make those determinations to the hiring agencies.

Section 300.702 is revised to make clear that the positions to which these regulations apply are those in Federal executive agencies.

E.O. 12291, Federal Regulations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect Federal employees and job applicants.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 300 as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for Subpart G is removed, and the authority for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218. Secs. 300.101 through 300.104 also issued under U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803. Subpart G also issued under 5 U.S.C. 3328.

2. In § 300.701, paragraph (b) is revised to read as follows:

§ 300.701 Statutory requirement.

* * * * *

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the executive agency making the appointment for which the eligibility is determined. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was either knowing or willful.

3. Section 300.702 is revised to read as follows:

§ 300.702 Coverage.

These regulations cover appointments to positions in Federal executive agencies.

4. Section 300.704 is amended by revising the fourth item of the statement under paragraph (b) to read as follows:

§ 300.704 Considering applicants for appointment.

* * * * *

(b) * * *

Non-Registrants Age 26 or Over

If you were born in 1960 or later, are 26 years of age or older, and were required to register but did not do so, you can no longer register under Selective Service law. Accordingly, you are not eligible for appointment to an executive agency unless you can prove that your failure to register was neither knowing nor willful. You may request a decision by returning this statement to the agency that was considering you for employment with your written request for a determination together with any explanation and documentation you wish to furnish to prove that your failure to register was neither knowing nor willful.

* * * * *

5. Section 300.705 is amended by revising paragraphs (d) (1) through (3) and paragraph (e) to read as follows:

§ 300.705 Agency action following statement.

* * * * *

(d) * * *

(1) Provide written notice to the individual that, in accordance with 5 U.S.C. 3328, he is ineligible for appointment unless his failure to register was neither knowing nor willful and that the agency will decide whether this failure to register was knowing and willful if he submits a written request for such decision and an explanation of his failure to register.

(2) Submit the individual's application, the statement described in § 300.704(b), a copy of the written notice, his request for a decision and explanation of his failure to register, and any other papers pertinent to his

registration status for determination to the official or employee the agency has designated to make determinations.

(3) An agency is not required to keep a vacancy open for an inidividual who seeks a determination.

(e) Individuals described in paragraph (c) of this section who do not submit a statement of registration or exemption are not eligible for employment consideration. Individuals described in paragraph (d) of this section are not eligible for employment consideration unless the agency finds that failure to register was neither knowing nor willful. Agencies are not required to follow the objections-to-eligibles procedures described in § 332.406 of this chapter concerning such individuals who were certified or otherwise referred by an OPM examining office or other office delegated examining authority by OPM. Instead, an agency will provide, for information as part of its certification report to that office, a copy of its written notice to the individual.

6. Section 300.706 is revised to read as follows:

§ 300.706 Adjudication.

(a) The official or employee designated by the employing agency will determine whether failure to register was knowing and willful when an individual has requested a decision and presented a written explanation, as described in § 300.705 of this part. The designated official or employee will make the determination based on the written explanation provided by the individual and any guidance the Office of Personnel Management (OPM) and the Selective Service System may provide. The burden of proof will be on the individual to show by a preponderance of the evidence that failure to register was neither knowing nor willful.

(b) An agency may consult with OPM in making determinations, and is encouraged to consult with the Selective Service System. An agency may make a favorable determination without consultation when an individual shows he was honorably discharged following active service in the armed forces or has an obvious physical handicap precluding active service.

(c) The employing agency will notify the individual in writing of the determination. The determination is final unless reconsidered by the Director of OPM or his or her designee. There is no further right to administrative review.

(d) The Director of OPM or his or her designee may reopen and reconsider a determination.

(e) A subsequent employing agency shall accept the determination of the initial employing agency, unless it can demonstrate to OPM that a different determination is clearly appropriate.

7. Section 300.707 is revised to read as follows:

§ 300.707 Termination of employment.

A covered individual who is serving under an appointment made on or after November 8, 1985, and who is not exempt from registration, will be terminated by his agency under the authority of the statute and these regulations if he has not registered as required, unless he registers or unless, if no longer eligible to register, the agency determines in response to his explanation that his failure to register was neither knowing now willful.

[FR Doc. 88-9581 Filed 4-28-88; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Proposed Increase in Expenses for 1987-88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the California Date Administrative Committee established under Marketing Order 987 for the 1987-88 fiscal year. The expenses would be increased from $386,267 to $411,267. The increase is needed to cover the salary and travel expenses of an executive director the committee plans to hire to manage its market promotion program.

DARES: Comments must be received by May 9, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 [7 CFR Part 987] regulating the handling of domestic dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act".

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are appoximately 26 handlers of California dates under this marketing order, and approximately 135 date producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

A final rule establishing expenses in the amount of $386,267 for the California Date Administrative Committee for the fiscal year period ending September 30, 1988, was published in the **Federal Register** on January 7, 1988 [53 FR 402]. That action also fixed the assessment rate to be levied on date handlers during the 1987-88 fiscal period. At a meeting held on April 6, 1988, the California Date Administrative Committee voted unanimously to increase its budget of expenses from $386,267 to $411,267.

The proposed increase is needed to cover the hiring, salary, and travel expenses of an executive director who will manage the California Date Administrative Committee's market promotion program. This person would direct the advertising agency, manage the promotion program, and make calls

on the trade to stimulate buyer interest in package and product quality dates.

No change in the assessment rate was recommended by the committee. Adequate funds are available to cover any proposed increase in expenses for the California Date Administrative Committee that may result from this action.

Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget increase approval needs to be expedited. Prompt approval is needed because the committee needs to have authority to cover the additional expenses associated with hiring someone to manage its market promotion program, and it wants to hire this person as soon as possible.

List of Subjects in 7 CFR Part 987

Marketing agreement and order, dates, California.

For the reasons set forth in the preamble, it is proposed that § 987.332 be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not be published in the Code of Federal Regulations.

§ 987.332 [Amended]

2. Section 987.332 is amended by changing "$386,267" to "$411,267".

Dated: April 25, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–9530 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M]

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7 CFR Part 1007

Milk in the Georgia Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rules.

SUMMARY: This action terminates the proceeding that was intitated to consider a proposal to suspend for the months of March-August 1988 the base and excess plan for paying producers for their milk under the Georgia milk order. The suspension was requested by Southern Milk Sales, Inc., a cooperative association that represents producers who deliver milk to handlers regulated by this marketing order.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 18, 1988; published March 24, 1988 (53 FR 9635).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on March 24, 1988 (53 FR 9635) concerning a proposed suspension of certain provisions of the order regulating the handling of milk in the aforesaid marketing area. Interested parties were invited to comment on the proposal in writing by March 31, 1988. The proposal would have suspended for the months of March-August 1988 the base and excess plan for paying producers for their milk.

Statement of Consideration

Suspension of the base-excess plan for paying producers for their milk for the months of March-August under the Georgia milk order was requested by Southern Milk Sales, Inc. The cooperative indicated that continuation of the base-excess plan would impose a severe hardship on its dairy farmer members.

In response to proponent cooperative's request, the Department invited other interested parties to comment on the proposed suspension of the base-excess plan. Views in support of the proposed suspension were received from Piedmont Milk Sales, Inc., and three individual dairy farmers.

Views in opposition to the proposed suspension were received from Dairymen, Inc., a cooperative representing in excess of one-third of the producers supplying the fluid milk needs of handlers regulated by the Georgia order. Other cooperative associations opposed to the suspension were Associated Dairy Farmers, Inc., Coble Dairy Products Cooperative, Inc., and National Farmers Organization. In addition, ten dairy farmers submitted comments in opposition to the proposed base plan suspension. Also, an attorney for an estate opposed the suspension on the basis that the milk base for such estate was sold at a recent farm sale for an amount in excess of $20,000 contingent upon the base-excess plan remaining in effect.

Views in opposition were also received from seven handlers who operate milk processing plants in the southeastern United States. The handlers involved are Pet Dairy, Kinnett Dairies, Kraft, Barber Dairies, Dairy Fresh Corporation, Malone & Hyde and Baker and Sons Dairy.

The comments received by the Department from individual producers and cooperative associations on behalf of their member producers expressed the views of more than 70 percent of the dairy farmers supplying the Georgia market. Dairy farmers opposed to the proposed suspension outnumber those in favor of the proposed suspension by a margin of two to one.

In view of the extensive opposition to the proposed suspension, it is concluded that the suspension order should not be issued. Accordingly, the proceeding to suspend the base and excess plan for paying producers for their milk should be and is hereby terminated.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on April 25, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–9527 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Public Hearings

AGENCY: Farm Credit Administration.

ACTION: Hearings on proposed regulations.

SUMMARY: The Farm Credit Administration (FCA) announces forthcoming public hearings on proposed regulations governing borrower rights and establishing minimum permanent capital standards for Farm Credit System (System) institutions. The regulations will be published as proposed regulations in the **Federal Register** in early May, as will a final announcement of these hearings. The FCA Board has decided to hold public hearings because of the continuing interest expressed to the FCA by those impacted by the regulations.

DATES: The public hearings on borrower rights will be held beginning at 10:00 a.m. on June 8, 1988, at the offices of the Farm Credit Administration in McLean, Virginia. The public hearing on minimum permanent capital standards will be held beginning at 10:00 a.m. on June 9, 1988, at the offices of the Farm Credit Administration in McLean, Virginia.

ADDRESS: Submit requests to appear and present testimony for the public hearing in writing (in triplicate) to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, McLean, VA 22102–5090.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 8, 1988 concerning proposed regulations implementing the provisions of the Agricultural Credit Act of 1987 concerning new borrower rights.

A public hearing will be held at the FCA offices in McLean, Virginia commencing at 10:00 a.m. on June 9, 1988 concerning proposed regulations establishing a minimum permanent capital standard for System institutions.

A person who wishes to present testimony at a session of either or both hearings must request that their name be placed on the calendar by June 1, 1988. Requests will be honored in the order received. The request should state the name, address and telephone number of the person wishing to testify and the general nature of the testimony which they will offer.

Formal presentation will be restricted to 5 minutes per person. In order to facilitate discussion on the record, witnesses must submit a detailed or summary statement of the text of their comments prior to the hearing. Submission deadline for statements or detailed summaries is also June 1. Persons will be notified by the FCA of acceptance of their request. All documents and testimony received by the FCA as part of the public hearing process will be made part of the public record and will be available for public inspection at the FCA's offices in McLean, Virginia.

The FCA notes that the hearing is to solicit the views of interested parties concerning the content of the regulations and their application to System Institutions. The FCA will not accept testimony or written statements in connection with the hearing which are not confined to this subject.

Date: April 25, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–9508 Filed 4–28–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–19–AD]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which currently requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the avionics standard communications bus (ASCB). That AD was prompted by reports of dual, simultaneous and unannunciated failures of the ATR–42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. This revision would provide terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS, and reconnecting Number 1 AHRS to the ASCB bus.

DATES: Comments must be received no later than June 21, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–19–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communicatons should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications receive on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM—AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On May 15, 1987, FAA issued Ad 87–11–08, Amendment 39–5628 (52 FR 19305; May 22, 1987), to require isolation of the Number 1 (Captain side) Attitude and Heading Reference System (AHRS) from

the System Avionics Standard Communications Bus (ASCB). Additionally, the autopilot is required to be disconnected at or above 200 feet above ground level (AGL), and approach operations are limited to Category I or higher weather minima. That amendment was prompted by two reports of dual, simultaneous, and unannunciated failures of the ATR-42's primary and heading displays. This condition, if not corrected, can result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. The display effectively "freezes" (no response, or intermittent and inaccurate response, to airplane maneuvers) to the display present at the time of failure.

Since issuance of that AD, Aerospatiale has issued Service bulletin ATR42-34-0018, Revision 1, dated September 22, 1987, which describes replacement of the existing AHRS with a modified AHRS, which will eliminate limitations imposed on the operation of the AHRS and will allow reconnection of AHRS 1 to the ASCB bus. This service bulletin supersedes ATR42-34A0016, dated March 23, 1987, which was reflected in the existing AD. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and applicable bilateral airworthiness agreement.

This action proposes to revise AD 87-11-08 to provide terminating action for isolating the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Bus (ASCB), by modifying the AHRS and rewiring the AHRS1 to ASCB bus, in accordance with the service bulletin previously mentioned.

In addition, the AD would be revised to clarify the compliance time for the required Airplane Flight Manual (AFM) revision.

Should an operator choose to install the optional modification, it would take approximately 5 manhours per airplane to accomplish, and the average labor cost would be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $200 per airplane.

The regualtions set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.)*, which statue is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessement.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 87-11-08, Amendment 39-5628 (52 FR 19305; May 22, 1987), as follows:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after June 8, 1987 (the effective date of Amendement 39-5628, AD 87-11-08), accomplish the following:

1. Isolate the pilots' AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR-42-34A-0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544-411, Mod- level U or subsequent, have been installed.

2. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

a. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

b. "Approach operations are limited to Category I or higher weather minima."

B. Replacement of the Attitude and Heading Reference Systems (AHRS) with a modified AHRS, and connection of four (4) wires between terminal blade 67VT1 and connector 1FP1-AA, in accordance with Aerospatiale Service Bulletin AIR 42-340018, Revision 1, dated September 22, 1987, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, AFF, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the AFF, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9483 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-27-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires operational testing of fuel boost pump bypass valves. This action would allow for termination of operational testing of boost pump bypass valves, when a certain fuel system modification is installed.

DATES: Comments must be received no later than June 21, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM–1405; telephone (206) 431–1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On December 23, 1987, the FAA issued AD 88–01–06, Amendment 39–5823 (53 FR 008; January 4, 1988), which requires operational testing of fuel boost pump bypass valves on Boeing Model 737 series airplanes to prevent the accumulation of water in the bypass valves, which could freeze and cause engine fuel starvation if power to the pump is lost.

The FAA has reviewed and approved Boeing Service Bulletin 737–28A1072, Revision 2, dated February 18, 1988, which describes procedures to replace the two existing fuel boost bypass valves with new improved valves, and install a revised tubing system. The FAA has determined that installation of this modification terminates the need to repetitively test the bypass valves, and is proposing to revise AD 88–01–06 to provide operators with the option of installing the modification in order to terminate the required repetitive operational tests.

The FAA also proposes to revise the existing AD (new paragraph C.) to require the concurrence of an FAA Principal Maintenance Inspector in requests by operators for use of alternate means of compliance. The FAA has determined that this proposed change would not increase the economic burden on any operator, nor would it increase the scope of the AD.

It is estimated that it would take approximately 3 manhours per airplane to accomplish the modification, and that the average labor cost would be $40 per manhour. Based on these figures, the cost for U.S. operators, should they choose to incorporate the modification, is estimated to be $120 per airplane.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88–01–06, Amendment 39–5823 (53 FR 008; January 4, 1988), by redesignating paragraph B. as C., and adding a new paragraph B., as follows:

Boeing: Applies to Model 737 series airplanes listed in Boeing Alert Service Bulletin 737–28A1072, dated August 27, 1987, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine flame out due to boost pump bypass valve freezing, accomplish the following:

A. Prior to accumulation of 150 flight hours after January 27, 1988 (the effective date of Amendment 39–5823, AD 88–01–06), and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737–28A1072, dated August 27, 1987, or later FAA-approved revisions.

B. The operational tests required by paragraph A., above, may be terminated when the fuel system modifications detailed in Boeing Service Bulletin 737–28A1072, Revision 2, dated February 18, 1988, or later FAA-approved revisions, are installed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons effected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707,

Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 19, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9484 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-01-AD]

Airworthiness Directives; Boeing Model 737-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would have required replacement or modification of the autopilot flight control computers (FCC) and autopilot and mode control panel (MCP). This proposal would revise the replacement parts and modification specified in the earlier proposal. This action is necessary because of reports that airplanes already modified in accordance with the proposed requirements are still subject to occurrences of non-selected changes in Altitude (ALT), Indicated Airspeed/Mach (IAS/MACH), and/or Vertical Speed (V/S) display window values on the autopilot mode control panel. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

DATES: Comments must be received no later than June 8, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Incorporated, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contract concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement or modification of the FCC and MCP on Boeing Model 737-200 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 19, 1987 (52 FR 5140).

Subsequent to the issuance of the NPRM, a foreign operator reported to the Boeing Company that it has already incorporated the proposed modification on its airplanes, but discovered that the modification did not prove to resolve the problem. In light of this information, the Boeing Company conducted additional testing to verify the extent of the anomaly and action necessary to correct it.

After a lengthy, in-depth testing program, Boeing has issued Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988, which describes procedures for installation of an improved FCC and MCP. Additionally, Honeywell/Sperry Commercial Flight Systems Group has issued Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163, dated February 10, 1988, which describe procedures for an improved modification of the FCC and MCP.

The FAA has reviewed and approved the previously mentioned service bulletins and has determined that the proposed rule must be revised to modify the units in accordance with these service bulletins.

The manhours required to accomplish the requirements of this proposed AD are unchanged from those stated in the previously published Notice of Proposed Rulemaking.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 or (2) is not a signficant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737-200 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 87-NM-01-AD, published in the **Federal Register** on February 19, 1987 (52 FR 5740), FR Doc. 87-3382, as follows:

Boeing: Applies to Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin, 737-22A1090, Revision 1, dated February 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent non-selected changes in the airplane Altitude (ALT), Indicated Airspeed/Mach) (IAS/MACH), and/or Vertical Speed (V/S) display windows on the autopilot mode control panel, accomplish the following:

A. Within one year after the effective date of this AD, accomplish either of the following:

1. Install improved FCC and MCP described in Boeing Service Bulletin 737-22A1090, Revision 1, dated February 25, 1988; or

2. Modify the FCC and MCP in accordance with Honeywell Service Bulletins A21-1141-162, dated November 20, 1987, and 21A-1141-163, dated February 10, 1988.

B. An alternative means of compliance or adjustment of compliance time, which provide an acceptable level of safety, and which has the occurrence of an FAA Principal Avionics Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and the Honeywell Corporation, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Air Transport Systems Division. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 20, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-9538 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5529/P450; FRL 3373-4]

Pesticide Tolerances for 3-(3, 5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2, 4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish permanent food and feed additive regulations to permit the combined residues of the fungicide 3-(3, 5-dichlorophenyl)-5-ethenyl-5-methyl-2, 4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3, 5-dichloraniline moiety in or on certain food and feed items. This proposal, to establish a maximum permissible level for combined residues of vinclozolin in or on the commodities, was requested in a petition submitted by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [FAP 7H5529/P450], must be received on or before May 16, 1988.

ADDRESS:

Written comments by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact: Lois Rossi (PM 21), RM. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 18, 1987 (52 FR 8526), which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted a food/feed additive petition (FAP 7H5529) proposing to establish food/feed additive regulations for the combined residues of the fungicide vinclozolin and its metabolites in or on raisins at 30 parts per million (ppm) and in or on grape pomace (dry) at 42 ppm. A rule was published in the **Federal Register** of May 13, 1987 (52 FR 17940) which established these tolerances until May 13, 1988, unless processing data on raisins were submitted that show that vinclozolin residues do not concentrate to a level above 30 ppm in raisins.

The data submitted in the petition and all other relevant material have been evaluated and discussed in a related document (PP 1E2457/P451), appearing elsewhere in this issue of the **Federal Register**, which proposes the establishment of a tolerance for the combined residues of vinclozolin on grapes.

BASF Wyandotte Corp. submitted a grape-processing study which adequately demonstrates that a raisin tolerance of 30 ppm is appropriate. Based on these data, the published tolerances due to expire on May 13, 1988, for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety will adequately cover vinclozolin resudies in raisins (30 ppm) and dry grape pomace (42 ppm). This document proposes to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 ppm and dry grape pomace at 42 ppm.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) Pesticide Analytical Manual for enforcement purposes. There is no

reasonable expectation of residues in eggs, milk, meat, or poultry from the use on grapes.

The pesticide is considered useful for the purpose for which the food and feed additive regulations are sought, and it is concluded that the establishment of these regulations would protect the public health. Therefore, the regulations are proposed as set forth below.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [FAP 7H5529/P450]. All written comments filed in response to this document will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations proposing the establishment of new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 1988.

Edwin E. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 193.137 [Amended]

b. In § 193.137 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending paragraph (b) in the first sentence by removing the phrase "until May 13, 1988."

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 561.440 [Amended]

b. In § 561.440 *3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione,* by amending the introductory text by removing the phrase "until May 13, 1988."

[FR Doc. 88–9634 Filed 4–28–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 234

[Docket No. R-88-1372; FR-2333]

Deregulation of Loan Origination Fee and Mortgagor Income Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Currently HUD, by regulation, places specific limits on the amount a mortgagee may collect from a mortgagor to compensate the mortgagee for expenses incurred in originating and closing a loan. Other regulatory limits govern the amount of mortgagor income considered "adequate" to meet the periodic payments required in the mortgage loan. This rule proposes to relax the regulatory limitations with respect to origination fees and to change the method of calculating the percentage of a mortgagor's income which will be used to determine whether a mortgagor qualifies for a HUD-insured mortgage.

DATE: *Comment due date:* June 28, 1988.

ADDRESS: Communications concerning this rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Coonts, Deputy Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under its current regulations, HUD places specific limits on the amount a mortgagee may collect from a mortgagor to compensate the mortgagee for expenses incurred in originating and closing a loan (see 24 CFR 203.27 and 234.48). Generally, the charge may not exceed one percent of the original principal amount of the mortgage. (For new construction involving construction advances, that charge may be increased to a maximum of two and a half percent of the original principal amount of the mortgage to compensate the mortgagee for necessary inspections and administrative costs connected with making construction advances. For mortgages on properties requiring repair or rehabilitation, mortgagor charges may be assessed at a maximum of two and one half percent of the portion of the mortgage attributable to the repair or rehabilitation, plus 1% on the balance of the mortgage).

This rule proposes, as a general matter, to remove the current specific limitations on the amounts mortgagees may charge for originating and closing a loan. However, the Commissioner would continue to set limits on the amount of such fees that could be included in the insured mortgage.

The Department has every reason to believe that removal of the current fee limitations will result in FHA mortgagees charging the fees that currently prevail in the mortgage market. These fees range between 1% and 3% depending upon market conditions, although the majority of lenders charge about 1%. This has been the experience of several other Federal mortgage credit agencies—*i.e.*, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation—neither of which places limitations on mortgagee origination fees.

When calculating the maximum mortgage amount for a property, HUD uses the appraised value of the property (which may include a portion of estimated closing costs). These closing costs include the mortgagee's origination fee. After this rule becomes effective, HUD will continue to set a maximum one percent origination fee (two and one half percent on new construction involving construction advances and similarly, on properties involving repair and rehabilitation, two and one half percent for that portion of a mortgage

attributable to the repair or rehabilitation plus one percent on the balance of the mortgage) for the calculation of closing costs that may be included as part of the appraised value. The amount of the origination fee exceeding one percent (2½ percent on new construction and rehabilitation), if any, will not be regulated, but also will not be permitted to be included in the maximum mortgage amount.

In addition to limiting origination fees, current regulations also provide specific guidelines for determining the adequacy of a mortgagor's income to meet the periodic payments required by the mortgage. The mortgagor's income is considered adequate if the total prospective housing expense does not exceed 35 percent of the mortgagor's "net effective income" and if the total prospective housing expense and other recurring charges do not exceed 50 percent of the mortgagor's net effective income (see 24 CFR 203.33). Exceptions to the above guidelines are permitted where certain favorable compensating factors, specified by the FHA Commissioner, are present. (In fact, these 35/50 ratios were increased by administrative directive in April, 1982 to 38/53.)

This rule proposes to remove these specific guidelines from the regulatory text and to provide a more flexible and realistic standard. The new standard (in conformity with general industry practice), would substitute the concept of gross income rather than the artificial concept "net effective income" currently used. This change should not, as a practical matter, have a significant impact on prospective mortgagors.

In reviewing the process of changing to gross income HUD also considered whether it should continue to include anticipated monthly maintenance and repairs and heat and utility costs as part of the housing expense in the analysis. We concluded that monthly estimates for maintenance and repairs often did not reflect the actual amounts expended for these items. And, although heat and utility estimates can be more accurately projected, we opted to use a monthly housing expense which included only the principal, interest, taxes and insurance (PITI) and related costs such as MIP and homeowner or condominium fees where applicable. This is the approach used by conventional lenders. We invite the views of the public on this decision and will give careful consideration to such views in developing a final rule.

Future instructions will continue to emphasize that these ratios form the basis for underwriting a loan application, but that final judgments should be made on the overall qualifications of the applicant, which include consideration of such compensating factors as significant cash reserves after closing, no increase in housing expense, company-provided automobile, etc.

The purpose of moving to this gross income standard is to (1) promote a more accurate analysis of the adequacy of buyers income and (2) make FHA processing more consistent with the general practice within the industry, consequently making it easier for mortgagees to process FHA applications.

In place of the rather intricate definitions and concepts which apply under the existing regulations (see HUD Handbook 4155.1 Rev.), the following concepts, now prevalent in the conventional mortgage market, are proposed to be used in administration instructions to implement this new regulatory approach:

Effective Income would mean allowable gross income from all sources. A Federal tax liability calculation would no longer be required.

Total Housing Expense would mean the sum total of principal, interest, real estate taxes, and hazard insurance (PITI). (**Note:** Monthly MIPO and homeowner association/condo fees must be added, when applicable). Maintenance and repairs and heat and utilities would no longer be used in this calculation.

Recurring Charges would continue to mean any debt that does not mature in six months or is classed as continuous, *e.g.*, automobile loans, child support, child care, etc. It will no longer include such things as state and local taxes, retirement or social security.

Fixed Payment would mean the sum total of the housing expense plus the recurring charges.

Residual Income would mean effective income minus fixed payment.

Housing Ratio would mean housing expense divided by effective income. The recommended guideline HUD anticipates using is 29 percent.

Fixed Payment Ratio would mean fixed payment divided by effective income. The recommended guideline HUD anticipates using is 38 percent.

In essence, the significant change this rule would make in the existing regulation would be to shift from use of a "net effective income" concept to use of a "gross income" concept in determining adequacy of a mortgagor's income. The impact of such a shift on applicant mortgagors should be negligible but the gain in FHA processing efficiency and accuracy could be significant. HUD would retain authority to adjust the guideline income and fixed payment ratios by administrative instructions to meet the demands of the housing market (see Mortgageee Letter (82–10)).

The 29 and 38 percent ratios cited above were arrived at after reprocessing approximately 200 previously processed and approved HUD cases. The former 38 and 53 percent ratios generally equated to these proposed ratios. Again, we invite public comment regarding these proposed ratios.

The examples below are based on realistic situations and are included to illustrate the point that a typical, aprovable application under the old guidelines could be expected to be found acceptable under the new guidelines.

I. A family of three with a $28,600 annual income. There are recurring charges of $403 ($225 under proposed method) per month. $43,000 purchase price. Base mortgage plus 100 percent MIP financed-$56,450 at 9.5 percent for a 15 year term:

Net income approach:		
Gross monthly income [1]	=	$2,383
Federal tax	=	−309
Net income [1]	=	2,074
Principal and interest	=	590
Taxes and insurance	=	82
Maintenace expense	=	20
Heat and utilities	=	80
Total housing expense [1]	=	772
Recurring charges	=	403
Total fixed payment [1]	=	1,175

[1] Denotes components used in computing ratios.

Housing ratio: $772 (total housing expense) ÷ $2,074 (net income) = 37 percent.

Fixed payment ratio: $1,175 (fixed payment) ÷ $2,074 (net income) = 56 percent.

Gross income approach:		
Principal and interest	=	$590
Taxes and insurance	=	82
Housing expense [1]	=	672
Recurring charges	=	225
Fixed payment [1]	=	897

[1] Denotes components used in computing ratios.

Housing ratio: $672 (housing expense) ÷ $2,383 (net income) = 28 percent.

Fixed payment ratio: $897 (fixed payment) ÷ $2,383 (gross income) = 38 percents.

II. A family of four with a $27,000 annual income. There are recurring charges of $358 ($200 under proposal method) per month. $65,500 purchase price. Base mortgage plus 100 percent MIP financed = $65,480 at 10 percent for a 30 year term.

Net income approach:		
Gross monthly income [1]	=	2,250
Federal tax	=	−211
Net incom [1]	=	2,039
Principal and interest	=	575
Taxes and insurance	=	86
Maintenance expense	=	25
Heat and utilities	=	101
Total housing expense [1]	=	787
Recurring charges	=	358
Total fixed payment [1]	=	1,145

[1] Denotes components used in computing ratios.

Housing Ratio: $787 (housing expense) ÷ $2,039 (net income) = 38 percent.

Fixed payment ratio: $1,145 (fixed payment) ÷ $2,039 (net income) = 56% percent.

Gross income approach:		
Principal and interest	=	$575
Taxes and insurance	=	86
Housing expense [1]	=	661
Recurring charges	=	200
Fixed payment [1]	=	861

[1] Denotes components used computing ratios.

Housing ratio: $661 (housing expense) ÷ $2,250 (gross income) = 29 percent.

Fixed payment ratio: $861 (fixed payment) ÷ $2,250 (gross income) = 38 percent.

III. A family of four with a $39,600 annual income. There are recurring charges of $539 ($308 under proposed method) per month. $97,000 purchase price. Base mortgage plus 100 percent MIP financed = $93,420 at 10 percent for a 30 year term.

Net income approach:		
Gross monthly income [1]	=	$3,300
Federal tax	=	−390
Net income [1]	=	2,910
Principal and interest	=	820
Taxes and insurance	=	122
Maintenance expense	=	30
Heat and utilities	=	130
Total housing expense [1]	=	1102
Recurring charges	=	539
Total fixed payment [1]	=	$1,641

[1] Denotes components used in computing ratios.

Housing ratio: 1,102 (housing expenses) ÷ $2,910 (net income) = 38 percent.

Fixed payment ratio: $1,641 (fixed payment) ÷ $2,910 (net income) = 56 percent.

Gross income approach:		
Principal and interest	=	$820
Taxes and insurance	=	122
Housing expense [1]	=	942
Recurring charges	=	308
Fixed payment [1]	=	$1,250

[1] Denotes components used in computing ratio.

Housing ratio: $942 (housing expense) ÷ $3,300 (gross income) ÷ 29 percent.

Fixed payment ratio: $1,250 (fixed payment ÷ $3,300 (gross income) ÷ 38 percent.

These three examples are provided as representative illustrations of the largely neutral impact and lack of effect the switch to gross income should have on applications involving FHA mortgage insurance.

The rule text revises the appropriate sections relating to origination fees and determination of mortgagor income in each of the following three parts: Part 203—basic home mortgage insurance, Part 213—cooperative unit mortgage insurance and Part 234—condominium unit mortgage insurance.

Finally, in each of the sections of the CFR the rule would revise, it is proposed to add a paragraph reaffirming the nondiscrimination policies and mission of the Department. Charges, fees or discounts will be collected, and determination of adequacy of mortgagor income will be carried out, in a nondiscriminatory manner.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since in general it would not significantly change mortgagor eligibility or FHA insurance benefits, but instead would increase the efficiency of mortgage insurance application processing.

This rule was listed as item H–18–87 [Sequence Number 905] in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13868) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

The home mortgage insurance programs affected by the rule are listed in the Catalog of Federal Domestic Assistance under program numbers 14.108 Rehabilitation Mortgage Insurance; 14.117 Mortgage Insurance—Homes; 14.119 Mortgage insurance—Homes for Disaster Victims; 14.120 Mortgage Insurance—Homes for Low and Moderate Income Families; 14.121 Mortgage Insurance—Homes in Outlying Areas; 14.122 Mortgage Insurance—Homes in Urban Renewal Areas; 14.123 Mortgage Insurance—Housing in Older, Declining Areas; 14.130 Mortgage Insurance—Purchase by Homeowners of Fee Simple Title from Lessors; 14.133 Mortgage Insurance—Purchase of Units in Condominiums; 14.140 Mortgage Insurance—Special Credit Risks; 14.159 Section 245 Graduated Payment Mortgage Program; 14.161 Single Family Home Mortgage Coinsurance; 14.165 Mortgage Insurance—Homes—Military Impacted Areas; 14.166 Mortgage Insurance—Homes for Members of the Armed Services; 14.172 Mortgage Insurance—Growing Equity Mortgages; 14.175 Adjustable Rate Mortgages.

List of Subjects

24 CFR Part 203

Mortgage insurance, Home improvement, Loan programs, housing

and community development, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, 24 CFR Parts 203, 213, and 234 would be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 would continue to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715(u)).

2. In § 203.27, paragraph (a)(2) would be revised, and a new paragraph (b) would be added to read as follows:

§ 203.27 Charges, fees or discounts.

(a) * * *

(1) [Reserved]

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided*, that the Commissioner may establish limitations on the amount of any such charge which can be included in the mortgage loan.

* * * * *

(b) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

3. In § 203.33 paragraph (a) would be revised and a new paragraph (c) would be added, to read as follows:

§ 203.33 Relationship of income to mortgage payments.

(a) *Adequacy of mortgagor's gross income.* A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet

(1) The periodic payments required by the mortgage submitted for insurance and

(2) Other long-term obligations.

* * * * *

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

4. The authority citation for 24 CFR Part 213 would continue to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

5. In § 213.518 paragraph (a)(1) would be revised and a new paragraph (b) would be added, to read as follows:

§ 213.518 Charges, fees or discounts.

(a) * * *

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided*, that the Commissioner may establish limitations on the amount of any charge which can be included in the mortgage loan.

* * * * *

(b) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

6. In § 213.521, paragraph (a) would be revised and a new paragraph (c) would be added, to read as follows:

§ 213.521 Relationship of income to mortgage payments.

(a) *Adequacy of mortgagor's gross income.* A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet

(1) The periodic payments required by the mortgage submitted for insurance and

(2) Other long-term obligations.

* * * * *

(c) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

7. The authority citation for 24 CFR Part 234 would continue to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b and 1715y) sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 234.48, paragraph (a)(1) would be revised, paragraph (c) would be redesignated as paragraph (d), and a new paragraph (c) would be added, to read as follows:

§ 234.48 Charges, fees or discounts.

(a) * * *

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan: *Provided*, that the Commissioner may establish limitations on the amount of any such charge which can be included in the mortgage loan.

* * * * *

(c) The mortgagee shall collect the charges, fees or discounts specified in paragraph (a) of this section from mortgagors in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

* * * * *

7. Section 234.56 would be revised to read as follows:

§ 234.56 Relationship of income to mortgage payments.

(a) A mortgagor must establish, to the satisfaction of the Secretary that his or her gross income is and will be adequate to meet:

(1) The Periodic payments required by the mortgage submitted for insurance; and

(2) Other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, marital status, source of income of the mortgagor or location of the property.

Dated: March 10, 1988.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 88-9550 Filed 4-28-88; 8:45 am]

BILLING CODE 4210-27-M

Office of the Secretary

24 CFR Parts 813, 882 and 913

[Docket No. R-88-1380; FR-2465]

Income Eligibility for Assisted Housing; Implementation of Percentage Limits on Lower Income Families

AGENCY: Office of the Secretary, HUD.

ACTION: Proposal rule.

SUMMARY: This rule would implement section 103 of the Housing and Community Development Act of 1987, which amends section 16 of the United States Housing Act of 1937. Section 103 provides that: (1) The Secretary may not totally prohibit admission to the public housing and Section 8 programs of Lower Income Families, other than Very Low-Income Families, for leasing of units which became available for occupancy under public housing annual contributions contracts and Section 8 housing assistance payments contracts on or after October 1, 1981, and (2) the Secretary shall establish percentage limitations on the admission of Lower Income Families in the separate assisted housing programs. The provision of section 16(b) which limits the admission of Lower Income Families other than Very Low-Income Families, to five percent of the units made available for Occupancy since October 1, 1981, remains unchanged.

The 1987 Act requires us to issue these regulations.

DATE: Comments due May 31, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

For Section 8 Programs administered under 24 CFR Parts 880, 881, and 883-886:

James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5654.

For Section 8 Programs administered under 24 CFR Part 882 (Existing Housing and Moderate Rehabilitation):

Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755-6887, at the above address.

For Public Housing Programs administered under 24 CFR Part 913:

Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, telephone (202) 426-0744, at the above address. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a) ("the 1937 Act") defines "lower income families" and "very low-income families" as follows:

> The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) amended the 1937 Act to establish national percentage limitations on the admission to the Section 8 and public housing programs of families whose annual incomes are between the "very low" and "lower" income limits to (1) not more than 10% of units that were available for occupancy before October 1, 1981 and are leased thereafter (raised to 25% by section 213 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983)) and (2) not more than 5% of units that first become available after October 1, 1981. Section 103 of the Housing and Community Development Act of 1987 ("1987 Act") (Pub. L. 100-242, approved February 5, 1988) has further amended the 1937 Act to require that HUD not totally prohibit admission to the programs of families in the lower income, but not very low income, category. The 1987 Act also requires HUD to establish national percentage limitations on admissions of families in that income category to separate housing programs so that, when aggregated, the percentages will be no more than 5 percent of dwelling units which become available for leasing under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after the effective date of the 1981 Amendments (October 1, 1981).

This rule proposes to implement the 1987 Act by establishing an apportionment of percentages among the programs involved so that, in the aggregate, the total percentage of families admitted to occupancy with incomes between the very low and lower income limits would not exceed 5 percent of dwelling units that have become available for occupancy since October 1, 1981. This apportionment only applies to dwelling units that became available for occupancy under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after October 1, 1981 (the effective date of the 1981 Amendments) and that are available for leasing by Lower Income Families.

This rule amends 24 CFR 813.105 and 24 CFR 913.105 to require the establishment, by **Federal Register** Notice, of the separate apportionment percentages for each Section 8 program and the public housing program. The rule also provides that apportionments may be redetermined from time to time by **Federal Register** Notice.

A proposed initial Notice of apportionments under the new rule is published in today's **Federal Register**. The Notice sets forth the proposed percentages for implementation of this rule. The Notice provides for the same comment period as this rule. A Final Notice will be issued after consideration of the comments, but not before the Proposed Rule is made final. (Future Notices will be issued first as Proposed Notices, with a 30-day comment period.)

The Proposed Rule does not change the requirement of the current regulation that no Lower Income Family that is not a Very Low-Income Family be admitted to a unit which became available for occupancy on or after October 1, 1981, without an authorization by HUD. The percentage limits established by the accompanying Notice are solely for the purpose of the administration of the statutory limitation by HUD and do not constitute a pre-authorization of exception admissions to PHAs or owners—nor do they establish a limit applicable to any particular project or PHA.

By statute, this rule does not apply to dwelling units made available under section 8 housing assistance contracts

for the purpose of preventing displacement, or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted family income, of Lower Income Families from projects being rehabilitated with assistance from rehabilitation grants under section 17 of the 1937 Act (Rental Rehabilitation). This rule, also by statute, does not apply to dwelling units assisted by Indian Housing Authorities.

Because of the inapplicability to dwelling units made available to prevent displacement from projects being rehabilitated, as discussed above, displacement as a result of Rental Rehabilitation or Development Activities under section 17 of the 1937 Act is no longer listed as a basis for an exception in § 813.105(b). Also, § 813.105(e)(1), which would permit HUD to maintain data as to the number of admissions that are subject to the percentage limitation, cross-references to paragraph (f) of this section to except from the percentage limitation those units which are made available to prevent displacement from projects being rehabilitated under section 17 of the 1937 Act.

Under the Proposed Rule, the restriction on eligibility of a non-Very Low Income Family only applies when a family is first admitted to a covered program. The restriction only applies to initial occupancy of a unit by the family but does not apply to occupancy of another unit while the family is continually assisted in the same program (See §§ 813.105(a) and 913.105(a)). In the Section 8 and public housing programs, eligibility income limits are only applied at the time of initial admission to a program and do not apply for continued occupancy or when a family from one unit to another in the same program. Similarly, the determination whether a non-Very Low Income Family is eligible for assistance under section 16 of the 1937 Act should only apply at the point of initial admission to the individual assisted program.

HUD notes that this approach is a change from the system under the prior rule. Under the old rule, the restriction is applied each time a family is admitted to a new unit, not just at the point of initial entry to the program. Each move to a new unit was counted against the national percentage limit, *e.g.*, the move of a participant in the Section 8 Certificate Program to a new unit, on a move by a public housing family from one project to another.

HUD has reexamined the legislative history of the section 16 restrictions and believes that the restriction need only be applied when family *eligibility* is determined—at the family's initial admission to the program. The Conference Report on the initial enactment of section 16 states that the report:

> * * * includes an amendment [*i.e.*, Section 16 the 1937 Act] which *retains eligibility for assisted housing* for persons whose income is 80 percent of median or below but *restricts that eligibility* to a certain percentage of total available units (H.Rpt. 97–208), July 29, 1981) (Emphasis supplied).

Thus the section 16 restrictions are part-and-parcel of the determination of family eligibility, and apply when eligibility is otherwise determined. HUD now believes that the original rule was more far-reaching than needed to carry out the mandate of section 16.

The 1987 amendments (which do not modify the previously enacted language) confirm the original statutory intention to apply a limitation on family eligibility but without changing the point at which eligibility is determined. The new statutory section (*i.e.*, section 103 of the 1987 Act) is headed "Income Eligibility for Assisted Housing". This is also the title of the conference description of section 103 (Rpt. 100–426, November 6, 1987). The text of the 1987 Act provides that HUD may not prohibit "admission of lower income families" and requires HUD to establish program-by-program percentage limits "on admission of lower income families". Thus the percentage limits apply to admission *families* (rather than "admission" of families to *units*). In established program practice and terminology, a family is only admitted once to the program—no matter how many times the family moves from unit to unit while continuously assisted in the program. Examination of the legislative text history thus confirms that the Congress understands the section 16 restrictions as pertaining to the determination of Family "eligibility", and as a restriction that applies when the family is admitted to the program—not when the family is simply moving from one program unit to another.

The proposed rule removes the provision currently at 24 CFR 813.105(c) which provides an automatic exception to the income limit restrictions for a Family participating in the Section 8 Certificate Program that moves to another unit with continued participation in the program. The execution of a Housing Assistance Payment Contract on behalf of a family already participating in the Section 8 Existing Housing Certificate program does not come under the percentage limitations of the 1987 Act.

The proposed rule also removes 24 CFR 813.105(d) which applies to housing vouchers. The percentage limitations of the 1987 Act do not apply to housing vouchers because issuance of housing vouchers is generally limited to Very Low-Income Families, except for families that have been continuously assisted under the 1937 Act and Lower Income Families who are displaced by Rental Rehabilitation activities. Families who are displaced by Rental Rehabilitation activities are exempt from the percentage limitations, as discussed above, and the Department has determined that "continuously assisted" families are also exempt because under Section 8(o) of the 1937 Act (The Voucher Program), a family is eligible for housing voucher assistance without regard to its income if it is continuously assisted. The statute does not require another determination of income eligibility, and therefore the income of a family that receives a housing voucher does not trigger applicability of the percentage limitations proposed to be implemented by this rule.

The Department considered an alternative means of implementing the statute by the allocation of specific numbers of exceptions directly to public housing agencies and owners. However, the Department determined that this method of implementation would create serious administrative problems and would fail to achieve the goal of the legislation, *i.e.*, to provide exceptions in those program areas where there is the greatest need. In arriving at this decision, the Department recognized that there would be too few exceptions available to have a meaningful impact if pre-allocated.

Other Matters

Because of the statutory deadline for implementing this rule, a 30-day comment period is being afforded this rule so that the Department may have the benefit of public comments. Under section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), no rule promulgated by the Department may become effective until after passage of the first period of 30 calendar days of continuous session of Congress after the day on which the rule is published as final. Because of this section 7(o) constraint of the Congressional calendar for the rest of the year, it is imperative that the comment period be no longer than 30 days to permit time for review of the public comments and development of a final rule at least 30 days before Congress adjourns for the year.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities beause the Department does not expect that the new apportionments would be significantly different, in their impact on small PHAs, from the present spread of exceptions used in the affected programs.

This rule was listed as item 1025 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13891) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.146, 14.149, 14.156, and 14.157.

List of Subjects

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development.

24 CFR Part 913

Public Housing.

Accordingly, 24 CFR 813.105 and 24 CFR 913.105 would be revised to read as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for Part 813 would continue to read as follows:

Authority: Secs. 3, 5(b), 8, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 813.105 would be revised to read as follows:

§ 813.105 Occupancy of units available on or after October 1, 1981.

(a) *General.* Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall be admitted to any of the following programs, for occupancy of a unit for which the effective date of the HAP Contract is October 1, 1981 or later. (This provision only applies to initial occupancy of a unit by the family, but does not apply to occupancy of another unit while the family is continuously assisted in the same program):

(1) Part 880 (Section 8 Housing Assistance Payments Program for New Construction);

(2) Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation Program);

(3) Part 882 (Section 8 Housing Assistance Payments Certificate Program and Moderate Rehabilitation);

(4) Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies);

(5) Part 884 (Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects);

(6) Part 885 (Loans for Housing for the Elderly or Handicapped);

(7) Part 886, Subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside)); or

(8) Part 886, Subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects)).

(b) *Request for exception.* A request by a PHA or Owner for approval of admission of Lower Income Families other than Very Low-Income Families to the covered programs, for occupancy of a unit for which the effective date of the HAP is October 1, 1981, or later, must state the number of admissions for which exception is requested, the basis for requesting the exception, and must provide supporting data. Bases for exceptions that may be considered by HUD include the following:

(1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(2) Need for admission of a broader range of tenants to preserve the financial or management viability of a Section 8 project because there is an insufficient number of potential applicants who are Very Low-Income Families;

(3) Commitment of an Owner to attaining occupancy of a Section 8 project by Families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community; and

(4) Supervision of a Section 8 project by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing under section 11(b) of the 1937 Act or under section 103 of othe Internal Revenue Code.

(c) *Apportionment for exceptions.* (1) Each assisted housing program listed in paragraph (a) of this section shall receive, as set forth in a Notice published in the **Federal Register** and subject to revision from time to time, an apportionment which represents the percentage of admissions to units in that program for which the date of the HAP contract is October 1, 1981, or later, of a Family other than a Very Low-Income Family. The sum of the number of units occupied by a Family other than a Very Low-Income Family at the time of admission to the program shall not exceed five percent of all of the dwelling units to which this section and 24 CFR 913.105 apply and which become available under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act, after October 1, 1981.

(2) These apportionments may be redetermined from time to time by **Federal Register** Notice.

(d) *Action on request for exception.* Whether to grant a request for an exception under paragraph (b) of this section is a matter committed by law to HUD's sole discretion, and no

implication is intended to be created that HUD will seek to grant approvals up to the maximum limit permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to Owners or PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

(1) The number of dwelling units that are subject to paragraph (a) of this section but not excepted under paragraph (f) of this section; and

(2) The number of units for which the effective date of the HAP contract is October 1, 1981, or later, which are occupied by Families that were not Very Low-Income Families at the time of admission to the program (on or after July 1, 1984).

(f) *Inapplicability.* This section shall not apply to any dwelling units assisted by Indian Housing Authorities, or dwelling units assisted with housing vouchers issued under section 8(o) of the 1937 Act. Also, this section shall not apply to admissions to dwelling units made available under section 8 housing assistance contracts for the purpose of preventing displacement or ameliorating the effects of displacement, including displacement caused by rents exceeding 30 percent of monthly adjusted family income, of lower income families from projects being rehabilitated with assistance from rehabilitation grants under section 17 of the 1937 Act.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 2502–0315; the requirements contained in paragraph (e) were approved under control number 2502–0204.)

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

3. The authority citation for Part 882 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. Section 882.209(m)(1) would be revised to read as follows:

§ 882.209 Selection and participation.

* * * * *

(m) * * *

(1) If a participant in the PHA's Section 8 Housing Certificate Program notifies the PHA that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family) either—

(i) Issue another Certificate, or

(ii) Deny issuance of a Certificate in accordance with § 882.210.

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

5. The authority citation for Part 913 would continue to read as follows:

Authority: Secs. 3, 6, and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437d, and 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 913.105 would be revised to read as follows:

§ 913.105 Occupancy of units available on or after October 1, 1981.

(a) *General.* Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall be admitted to the Public Housing Program, for occupancy of any unit in a Public Housing project for which initial occupancy began after October 1, 1981. (This provision only applies to initial occupancy of a unit by the Famly, but does not apply to occupancy of another unit while the Family is continuously assisted in the same program.)

(b) *Request for exception.* A request by a PHA for approval of admission of Lower Income Families other than Very Low-Income Families to the Public Housing Program for occupancy of a unit which first became available for occupancy on or after October 1, 1981, must state the number of admissions for which exception is requested, the basis for requesting the exception, and must provide supporting data. Bases for exceptions that may be considered by HUD include the following:

(1) Need for admission of a broader range of tenants to obtain full occupancy;

(2) Local commitment to attaining occupancy by Families with a board range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(3) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(4) Need to avoid desplacing Lower Income Families from a project acquired by the PHA for rehabilitation.

(c) *Apportionment for exceptions.* (1) The Public Housing Program shall receive, as set forth in the Notice published in the **Federal Register** and subject to revision from time to time, an apportionment which represents the percentage of admissions to units in the Public Housing Program that first became available for occupancy on or after October 1, 1981, by a family other than a Very Low-Income Family. The sum of the number of units occupied by a Family other than a Very Low-Income Family at the time of admission to the programs shall not exceed five percent of all of the dwelling units to which this section and 24 CFR 813.105 apply and which become available under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act, after October 1, 1981.

(2) These apportioments may be redetermined from time to time by **Frederal Register** Notice.

(d) *Action on request for exception.* Whether to grant a request for an exception under paragraph (b) of this section is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limit permitted by statute, nor is any presumption of entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to PHAs at regular intervals. HUD may withdraw permission to exercise these exceptions for program applicants at any time exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to:

(1) The number of dwelling units assisted under the 1937 Act in the Public Housing Progams in projects for which initial occupancy began on or after October 1, 1981, and

(2) The number of units that first became available for occupancy on or after October 1, 1981, that are occupied by Families which were not Very Low-Income Families at the time of

admission to the program (on or after July 1, 1984).

(Approved by the Office of Management and Budget under control number 2502-0204)

(f) *Inapplicability.* This section shall not apply to dwelling units assisted by Indian Housing Authorities.

Dated: April 5, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-9548 Filed 4-28-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Safety Standards for Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75. This extension is in response to requests from the mining community.

DATES: Written comments on the proposed rule for ventilation standards must be received on or before May 27, 1988.

ADDRESSES: Send comments to the Office of Standards, Regulations, an Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) a proposed rule to revise existing ventilation standards for underground coal mines. On March 29, 1988, (50 FR 10104) MSHA extended the comment period to April 28, 1988 in response to requests from the mining community. Due to further requests from the public, MSHA is extending the comment period for the proposed rule to May 27, 1988. All interested parties are encouraged to submit comments prior to that date.

Date: April 27, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-9684 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E2457/P451; FRL 3373-3]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a permanent tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter in the preamble called "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on grapes at 6.0 parts per million (ppm). This regulation, to establish a maximum permissible level for residues of vinclozolin on grapes, was requested by BASF Wyandotte Corp.

DATE: Comments, identified by the document control number [PP 1E2457/P451], must be received on or before May 16, 1988.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Program, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of June 23, 1982 (47 FR 27126), which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Rd., Parsippany, NJ 07054, had submitted pesticide petition 1E2457 proposing to establish a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity table grapes at 6.0 parts per million (ppm).

A rule was published in the Federal Register of May 13, 1987 (52 FR 17940) which established those tolerances for a period of 1 year from the date of publication of the rule in the Federal Register unless processing data on raisins were submitted that show that vinclozolin residues do not concentrate to a level above 30 ppm in raisins.

The data submitted in the petition and other relevant material have been evaluated. BASF Wyandotte Corp. submitted a grape-processing study which adequately demonstrates that a raisin tolerance of 30 ppm is appropriate. Based on these data, the published tolerances due to expire on May 13, 1988 for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety would adequately cover vinclozolin residues in raisins and dry grape pomace. This document proposes to establish permanent tolerances for vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on raisins at 30 ppm and dry grape pomace at 42 ppm.

The toxiocological data considered in support of the proposed tolerances include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 450 ppm (22.5 mg/kg/day), the highest dose tested.

2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).

3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).

4. A mouse teratology study with a NOEL for maternal toxicity of 6,000 ppm (900 mg/kg/day), the highest dose tested, and a NOEL for developmental toxicity of 600 ppm (90 mg/kg/day).

5. A rabbit teratology study with a NOEL for maternal toxicity of 300 mg/kg/day (9,900 ppm) and a NOEL for developmental toxicity of 80 mg/kg/day) (2,640 ppm). Levels tested: 0, 600, 6,000, and 60,000 ppm.

6. A chronioc feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 pm (24 mg/kg), and no compound-related oncogenic effects under the conditions of the study at doses of 4,374 ppm (219 mg/kg bw/day), the highest dose tested.

7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL of 486 ppm (73 mg/kg) and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (503 mg/kg/ bw/ day), the highest dose tested.

8. A dominant lethal assay in mice, negative at 2,000 mg/kg (only level tested).

9. Sister chromatid exchange study in bone marrow of the Chinese hamster was negative.

10. Reverse mutation test with and without metabolic activation system which was negative for mutagenic effects.

11. A primary rat hepatocyte unscheduled DNA synthesis assay which showed negative mutagenic activity and a mouse lymphoma forward mutation assay which showed weak positive mutagenic activity only at concentrations exceeding solubility in the test medium. The studies satisfy requirements for DNA damage/repair assay in mammalian cells and gene mutation cells in culture.

Based on the NOEL of 100 ppm in the 6-month dog feeding study, and using a hundred-fold uncertainty factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.025 mg/kg/day. The maximum permitted intake (MIP) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.01199 mg/day. The proposed action would increase the TMRC to 0.130 mg/day, utilize an additional 8.13 percent of the TMRC to bring the total percent of the ADI utilized to 51.84 percent, and result in a 3.9-percent increase of the ADI.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) Pesticide Analytical Manual for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on table grapes.

Based on the data and information considered by the Agency, it is concluded that the pesticide is useful for the purposes for which the toterance is sought, and it is concluded that the proposed tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E2457/P451]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 26, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.380 [Amended]

2. In § 180.380 *3-(3-,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues*, by amending paragraph (b) by deleting the phrase "until May 13, 1988," from the first sentence.

[FR Doc. 88–9633 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3371-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by VAW of America, Incorporated, St. Augustine, Florida, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 13, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May 16, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW.,

Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–88–VWEP–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Mr. Robert Kayser, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of VAW's petitioned waste on human health and the environment. Specifically, the model will be used to predict a compliance-point concentration which will be compared directly to the level of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very

different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because VAW utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

VAW of America, Incorporated, St. Augustine, Florida

1. Petition for Exclusion

VAW of America, Incorporated (VAW), located in St. Augustine, Florida, manufactures mill-finished aluminum extrusions. VAW has petitioned the Agency to exclude its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum." The listed constituents of concern for F019 waste are chromium and complexed cyanide. VAW petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. VAW also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. VAW further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments 42 U.S.C. 6921(f), 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of VAW's petition.

2. Background

VAW originally petitioned the Agency to exclude its wastewater treatment sludge filter cake on December 17, 1986. In support of its petition, VAW submitted (1) detailed descriptions of its manufacturing and waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) total constituent and EP toxicity analyses data for all the EP toxic metals, nickel and cyanide from representative samples of the wastewater treatment sludge; and (4) total constituent analyses data for total sulfide, and total oil and grease analyses data on representative waste samples.

VAW manufactures mill-finished aluminum extrusions. The aluminum extrusions, after milling, are cleaned with heated sodium hydroxide and rinsed with water. The cleaned and milled aluminum extrusions then are dipped and sprayed with chromic acid in a chromate conversion process in order to deposit a suitable coating for subsequent painting/finishing operations. The mill-finished aluminum extrusions then are rinsed with water and dried.

The only wastes to enter VAW's treatment system are the rinse waters generated after the cleaning and chromate conversion processes. The rinse waters are combined and acidified with sulfuric acid. Sodium bisulfite is added in order to reduce the hexavalent chromium to trivalent chromium. The resulting wastewater then is neutralized with sodium hydroxide, after which both a polymer and calcium chloride are added to promote flocculation and precipitation of the metal hydroxides. The treated wastewater is pumped to a surge tank and through a clarifier and sand filter. The thickened sludge is removed from the clarifier, and water is removed from the sludge by a filter press. The effluent from the sand filter is either reused or pumped to the ground water as permitted by VAW's industrial waste treatment facility permit. The supernatant from the filter press is returned to the clarifier. The filter-pressed sludge is dropped from the filter press into a 20 cubic-yard hopper, drummed, and is currently disposed of off-site in a hazardous waste landfill.

To collect representative samples from filter presses like VAW's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

VAW collected a total of eleven grab samples of the wastewater treatment sludge filter cake over a period of eleven months. One drum of the waste was randomly selected each month. The contents of the drum were completely mixed with a stainless steel shovel, and the grab sample was collected by pushing a quart jar through the waste. Seven of the eleven samples were analyzed for both the total constituent concentrations (*i.e.*, mg of a particular constituent per kg of waste) and the extraction procedure (EP) leachate concentrations (*i.e.*, mg of a particular constituent per liter of extract), of all the EP toxic metals, nickel, and cyanide. The remaining four samples were analyzed for total constituent concentrations of sulfide and for total oil and grease content. VAW claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over the eleven month period are representative of any variation in the wastewater treatment sludge constituent concentrations.

3. Agency Analysis

VAW used SW–846 method numbers 7040–7951 and 9010 to quantify the total constituent concentrations and SW–846 method number 1310 to quantify the EP leachable concentrations of the EP toxic metals, nickel, and cyanide in their waste. VAW used SW–846 method number 9030 to quantify the total constituent concentration of sulfide. Table 1 presents the maximum total constituent concentration of the EP toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. (Analysis for EP or multiple extraction procedure (MEP) leachable concentrations of sulfide (or reactive sulfide) is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by VAW, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.) Using SW–846 method number 3540, VAW determined that its waste had a maximum oil and grease content of 0.01 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology

(*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS WASTEWATER TREATMENT SLUDGE FILTER CAKE (MG/KG)

Constituents	Total constituent concentration
Arsenic	<0.05
Barium	<10
Cadmium	<1.0
Chromium	18260
Lead	19.2
Mercury	<0.05
Selenium	<0.05
Silver	<1.0
Nickel	<5.0
Cyanide	<1.0
Sulfide	46.0

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS WASTEWATER TREATMENT SLUDGE FILTER CAKE (MG/L)

Constituents	EP leachate concentration
Arsenic	<0.015
Barium	<1
Cadmium	[1] <0.05
Chromium	0.18
Lead	0.08
Mercury	<0.002
Selenium	<0.05
Silver	<0.05
Nickel	<0.1
Cyanide	[2] <0.05

[1] Although the detection limit used was <0.5 mg/l, the maximum possible EP leachate concentration of cadmium must be <0.05 mg/l, assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2 liters of water) and a theoretical worst case leaching of 100 percent.

[2] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2 liters of water) and a theoretical worst case leaching of 100 percent.

VAW submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge will be 82.5 tons. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts VAW's certified estimate of 82.5 tons (approximately 81 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant VAW's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may randomly select this facility in the future for spot-sampling.

4. Agency Evaluation

VAW stated in its petition that it plans to dispose of its petitioned wastewater treatment sludge filter cake in an offsite non-hazardous landfill if its petition is granted. The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario. Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the leachability and potential for groundwater contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a groundwater transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of VAW's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of chromium and lead from VAW's wastewater treatment sludge filter cake. The Agency's evaluation, using the waste volume of 81 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, barium, cadmium, cyanide, mercury, nickel, selenium, and silver) from VAW's waste because they were not detected in the EP extract using the appropriate SW–846 analytical test methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS OF CONCERN WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituent	Compliance-point concentration (mg/l)	Regulatory standard (mg/l)
Chromium	0.0056	0.05
Lead	0.0024	0.05

The waste exhibited chromium and lead levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). Because the concentration of total cyanide is less than 1 ppm, by inference, the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide is less than 500 ppm, by inference, the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded after reviewing VAW's processes and raw materials list, that no other hazardous constituents of concern are being used by VAW, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of VAW's waste. In addition the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that VAW's wastewater treatment system can render the F019 wastes non-hazardous. VAW's manufacturing and waste treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. Additionally, despite the uniformity of VAW's processes, VAW opted to collect eleven random samples over an eleven month period—which is nearly three times the number of samples required by the Agency to be collected by petitioners having similar manufacturing and waste treatment processes. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes intended to be used thereafter. The Agency, therefore, is proposing that VAW's waste be considered non-hazardous, as it should not present a significant hazard to either human health or the environment.

The Agency, therefore, proposes to grant an exclusion to VAW of America, Incorporated, located in St. Augustine, Florida, for its wastewater treatment sludge filter cake described in its petition as EPA Hazardous Waste No. F019. If the proposed rule becomes effective, the wastewater treatment sludge filter cake should no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 22, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add to table 1 the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
VAW of America Incorporated.	St. Augustine, FL.	Wastewater treatment sludge filter cakes (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date of final rule's publication].
•	•	•

[FR Doc. 88–9524 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3372-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Roanoke Electric Steel Corporation, Roanoke, Virginia, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 13, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by May 16, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW, (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-RSEP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Ms. Linda Cessar, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the

constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Roanoke's petitioned waste on human health and the environment. Specifically, the model will be used to predict a compliance-point concentration which will be compared directly to the level of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst case waste disposal scenario for the petitioned waste, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Roanoke is seeking an upfront delisting (*i.e.*, an exclusion for wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and thus, would serve no purpose.

Roanoke petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. Additionally, the Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable level of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of Roanoke's upfront delisting petition, a list of constituents was developed for the verification testing and tentative maximum allowable treated waste concentrations for these constituents were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating waste, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities could be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

Roanoke Electric Steel Corporation, Roanoke, Virginia.

1. Petition for Exclusion

Roanoke Electric Steel Corporation (Roanoke), located in Roanoke, Virginia, produces reinforcing bars, billets, and merchant steel bars. Roanoke has petitioned the Agency to exclude its chemically stabilized electric arc furnace dust, presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for K061 waste are cadmium, chromium, and lead. Roanoke petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Roanoke also believes that its treatment process will generate a nonhazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. Roanoke further believes that the waste is not hazardous for any other reason. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments 42 U.S.C. 6921(f), 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Roanoke's petition.

2. Background

Roanoke originally petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD) on March 16, 1987. In support of its petition, Roanoke submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; [1] (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) total constituent, EP toxicity, and multiple extraction procedure (MEP) analyses data (used to assess stabilized wastes) for all the EP toxic metals, nickel and cyanide from representative samples of the CSEAFD as generated using a laboratory-scale treatment system; and (4) total constituent analyses for total sulfide, and total oil and grease analyses on representative waste samples. Once Roanoke's full-scale treatment system is on-line, EPA proposes that Roanoke be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total constituent concentrations of total reactive sulfide and total reactive cyanide on batches of treated waste (see section 4—*Agency Evaluation*).

Roanoke produces reinforcing bars, billets, and merchant steel bars by processing steel scraps in four electric arc furnaces (EAFs). The scrap steel is melted and refined in the furnace when an electric arc surges between the electrodes and scrap. When the molten steel reaches 3000 degrees Fahrenheit, it is poured into a ladle and cast into ingot molds.

The EAFs produce dust during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. The EAF dust is collected in a fluidized storage silo.

The EAF dust is then mixed with weighed amounts of certain chemicals in a prescribed ratio in accordance with Roanoke's proprietary processing sequence. Roanoke has tested laboratory-scale levels of stabilized waste in an experimental treatment unit. Data from this unit has been submitted as the basis for the petitioned upfront delisting. Roanoke plans to construct a full-scale mixing and stabilization facility once their laboratory-scale system has produced treated wastes that support an upfront delisting decision. Roanoke plans to dispose of the chemically stabilized EAF dust at an off-site non-hazardous waste dedicated landfill, if the exclusion is granted.

To collect representative samples from EAF baghouses like Roanoke's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Roanoke collected a total of five grab samples of the EAF dust from the storage silo on five different days between January 27, 1987 and March 2, 1987. Each sample was collected in a thirty gallon container and sent to Roanoke's laboratory for stabilization. The five samples were analyzed for total constituent concentrations (*i.e.*, mg of a particular constituent per every kg of waste), and extraction procedure (EP) and multiple extraction procedure (MEP) leachate concentrations (*i.e.*, mg of a particular constituent per liter of extract), of all the EP toxic metals, nickel, and cyanide. The five samples were also analyzed for total constituent concentrations of sulfide and for total oil and grease content.

Roanoke claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over a four week period are representative of any variation in CSEAFD constituent concentrations. Additionally, Roanoke claims that utilizing a fluidized (air) transport system to convey the EAF dust from the baghouses to the storage silo (where the EAF dust is continually mixed) minimizes the variability in EAF dust constituent composition/concentration (*i.e.*, mixing several day's generation of FAF dust in the storage silo will tend to average out high total constituent concentrations of the constituents of concern in the EAF dust potentially generated on one day with lower total constituent concentrations of the constituents of concern in the EAF dust potentially generated on another day, thus minimizing the expected range in total constituent concentrations of the constituents of concern in the EAF dust).

3. Agency Analysis

Roanoke used SW–846 method numbers 7040–7951 and 9010 to quantify the total constituent concentrations and SW–846 method numbers 1310 (standard EP) and 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, nickel, and cyanide in their waste. Roanoke used SW–846 method number 9030 to quantify the total constituent concentration of sulfide. Table 1 presents the maximum total constituent concentration of the EP toxic metals, nickel, cyanide, and sulfide. Tables 2 and 3 present the maximum EP leachate values and maximum MEP leachate values of the EP toxic metals, nickel, and cyanide, respectively. (Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) are not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by Roanoke, when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices vary and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS CSEAFD (MG/KG)

Constituents	Total constituent concentration
Arsenic	4.49
Barium	385
Cadmium	265
Chromium	2190
Lead	18100
Mercury	1.75
Selenium	1.08
Silver	31.9
Nickel	281
Cyanide	0.8
Sulfide	21.3

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS CSEAFD (MG/L)

Constituents	EP leachate concentration
Arsenic	[1] <0.22
Barium	1.48
Cadmium	0.04
Chromium	0.22
Lead	0.27
Mercury	0.001
Selenium	[1] <.054
Silver	<0.04
Nickel	<0.36
Cyanide	[1] <0.04

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution of 2000 mls of water) and a theoretical worst case leaching of 100 percent.

[1] Roanoke claimed that its CSEAFD treatment process is confidential and proprietary; therefore, the Agency is handling information on Roanoke's CSEAFD treatment process as Confidential Business Information (CBI).

TABLE 3.—MAXIMUM MEP LEACHATE CONCENTRATIONS CSEAFD (MG/1)

Constituent	Concentration days								
	1	2	3	4	5	6	7	8	9
Arsenic [1]									
Barium	0.27	0.2	0.19	0.18	0.17	0.15	0.13	0.16	<0.03
Cadmium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	0.01	0.01
Chromium	0.03	0.02	0.02	0.02	0.04	0.02	<0.02	0.02	0.02
Lead	0.11	0.08	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05
Mercury	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Nickel	0.04	0.03	0.02	0.02	<0.02	<0.02	<0.02	<0.02	0.02
Selenium [1]									0
Silver	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	
Cyanide									

[1] Multiple extraction analyses were not completed due to the sufficiently low total constituent concentrations (*i.e.*, assuming the 20:1 liquid to solid ratio of the EP toxicity test and 100 percent leaching, the worst case extract concentration would be below the level of regulatory concern).

Using SW–846 method number 3540, Roanoke determined that its waste had a maximum oil and grease content of 0.0127 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may have significant concentrations of the constituent of concern in the oil phase, and thus, their presence would not be assessed using the standard EP leachate procedure). See SW–846 method number 1330. None of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Roanoke submitted a signed certification stating that based on current annual waste generation and laboratory-scale mixing ratio of reagent to EAF dust, its maximum annual generation rate of CSEAFD will be 15,850 tons. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Roanoke's certified esitmate of 15,850 tons (approximately 15,654 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Roanoke's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may randomly select to visit this facility in the future for spot-sampling.

4. Agency Evaluation

Roanoke stated in its petition that it plans to dispose of its petitioned stabilized waste in an off-site non-hazardous dedicated landfill if its petition is granted. The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario. Under this disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizonal spread (VHS) landfill model which predicts the leachability and potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modelling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Roanoke's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except arsenic, selenium, and cyanide) from Roanoke's CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 15,654 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 4. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, cyanide, and selenium) from Roanoke's waste because they were not detected in the EP extract using the appropriate SW–846 analystical test methods (see Table 2). the Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modelling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropirate analystical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 4.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS CSEAFD

Constituent	Compliance-point concentration (mg/l)	Regulatory standard (mg/l)
Barium	0.23	1.0
Cadmium	.006	0.01
Chromium	.035	.05
Lead	.043	.05
Mercury	.00015	.002
Nickel	.057	.50
Silver	.0063	.05

The CSEAFD exhibited barium, cadmium, chromium, lead, mercury, and silver levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). The concentration of nickel at the compliance point is below the Agency's health-based level of 0.50 mg/1. See Verified Reference Doses (RfDs) of the U.S. EPA, ORD/ECAO–CIN–475, January 1986.

The Agency used the MEP test to assess the long-term stability of Roanoke's stabilized waste. In this procedure, a sample of Roanoke's stabilized waste was ground and passed through a 100x mesh screen in order to determine whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of

nine synthetic acid rain extractions were performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 3 indicate that the CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

Because the concentration of total cyanide is 0.8 mg/kg, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent of sulfide is 21.3 mg/kg, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded after reviewing Roanoke's processes and raw materials list, that no other hazardous constituents of concern are being used by Roanoke, and that no other constitutents of concern are likely to be present, or formed as reaction products or by-products of Roanoke's waste. In addition the waste does not exhibit any of the characteristics of ignitability corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that Roanoke's CSEAFD treatment system can render the K061 wastes non-hazardous. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades or scrap used and the particular grades of steel produced during the demonstration period and intended to be used and produced, respectively, thereafter. The Agency, therefore, is proposing that Roanoke's CSEAFD waste, once it meets certain verification testing requirements, be considered non-hazardous, as it should not present a significant hazard to either human health or the environment. The Agency, therefore, propose to grant a conditional exclusion to the Roanoke Electric Steel Corporation, located in Roanoke, Virginia, for its fully cured chemically stabilized electric arc furnace dust treatment residue described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, the fully cured treatment residue should no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by Roanoke.

This proposed exclusion is conditional upon the following:

(1) *Testing:*

(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

(B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the initial report required in (1)(A).

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exeed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 1.26 mg/l, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA.

(3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Section Chief, Variances Section, notifies Roanoke that the conditions have been lifted.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators, and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. Accordingly, the Agency is proposing an initial testing condition and a subsequent testing condition.

The proposed initial testing condition would require Roanoke to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency has proposed this initial testing condition to both gather data obtained from the full-scale treatment system, and to ensure that the full-scale treatment system is closely monitored during the start-up period.

The proposed subsequent testing condition provides the Agency with final verification data showing that the full-scale treatment system is operating as described in the petition and would be initiated once the initial testing period is completed. As proposed, the subsequent testing condition would require Roanoke to continue the daily testing and reporting requirements of the initial testing condition until EPA received the results from four consecutive daily composites of the petitioned waste showing that the maximum allowable levels (*i.e.*, the delisting levels of condition number 2) were not exceeded and the Section Chief, Variances Section, notified Roanoke that the conditions had been lifted.

The Agency proposed a mechanism to terminate the testing and reporting requirements of the subsequent testing condition for the following reasons: (1) Based on the laboratory-scale data submitted by Roanoke, the Agency believes that consistently non-hazardous wastes can be generated from the CSEAFD treatment process and thus continued testing would be excessive; and (2) termination of this condition after four consecutive daily composites meeting the delisting levels of condition number (2), is consistent with existing policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. (EPA normally requests a minimum of four samples of a continuously generated waste.) See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid

Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (*e.g.*, see 51 FR 41323, November 14, 1986), require continuous batch testing.

(4) *Data submittals:* All data must be submitted to the Section Chief, Variances Section, PSPD/OSW, (WH–563), U.S. EPA, 401 M Street, S.W., Washingotn DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Roanoke's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(Name of Certifying Person)

Date

(Title of Certifying Person)

If made final, the proposed exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered or if the percentage of each different type of scrap metal (*i.e.*, steel turnings, #1 bundles, #2 bundles, #1 steel, #2 steel, busheling, railroad steel, plate and structural, shredded scrap, and railroad specialties) used to charge the furnace falls outside the percent range of each type of scrap metal historically used to charge the furnaces (as documented in the petition), and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: April 22, 1988.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add to table 2 the following wastestream in alphabetical order:

Appendix IX.—Wastes Excluded Under §§260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Roanoke Electric Steel Corporation	Roanoke, Virginia	Chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the data obtained from Roanoke's full-scale CSEAFD treatment facility because Roanoke's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constitutents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Roanoke must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW-846 methodologies. Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* The daily testing requirements of (1)(A) shall continue and the analytical test data must be reported every 90 days following the intitial report required in (1)(A). (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 1.26 mg/1, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA. (3) *Termination of Testing:* The testing and reporting requirements of condition (1)(B) shall be terminated by EPA when the results of four consecutive daily composites for the petitioned waste show the maximum allowable levels in condition (2) are not exceeded and the Section Chief, Variances Section, notifies Roanoke that the conditions have been lifted. (4) *Data submittals:* All data must be submitted to the Section Chief, Variances Section, PSPD/OSW, (WH-563), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified in (1)(A) and (1)(B), respectively. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Roanoke's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premises upon the company's reliance on the void exclusion."

[FR Doc. 88-9523 Filed 4-28-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 704

[OPTS-82032; FRL-3372-6]

EDTMPA and its Salts; Submission of Notice of Manufacture or Import

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to require reporting by manufacturers and importers of the chemical substances phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]] tetrakis-(EDTMPA) (CAS No. 1429-50-1) and its salts. This proposed reporting rule would allow EPA to monitor the manufacture, import, and end uses of EDTMPA and its salts, and to investigate the health and environmental impacts of those activities. Small businesses that manufacture or import these substances would be exempt from this rule.

DATE: Written comments on this proposed rule should be submitted by May 31, 1988.

ADDRESS: Comments should bear the docket control number OPTS-82032 and should be submitted, in triplicate, to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection at the address given

above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

The Agency is proposing this rule pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a). Section 8(a) authorizes the Administrator to promulgate rules which require each person (other than a small manufacturer or importer) who manufactures or imports or who proposes to manufacture or import a chemical substance, to submit such reports as the Administrator may reasonably require.

II. Summary of This Rule

This proposed rule applies to the chemical substances identified on the TSCA Chemical Substance Inventory as:

CAS No.	Chemical name
1429-50-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-(EDTMPA)
15142-96-8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-hexasodium salt
34274-30-1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-potassium salt
57011-27-5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-ammonium salt
67924-23-6	Cobaltate(6-),[[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969-67-9	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis[methylene)]]tetrakis-[phosphonato]](8-)-N,N',O,O'',O''',O''''']-, pentasodium hydrogen, (OC-6-21)-
67989-89-3	Cuprate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025-39-8	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (6-)-N,N',O,O'',O''',O''''']-, pentaammonium hydrogen, (OC-6-21)-
68188-96-5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-tetrapotassium salt
68309-98-8	Cadmate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68901-17-7	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-octaaammonium salt
68958-86-1	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]tetrakis-[phosphonato]](8-)]-, pentaammonium hydrogen, (OC-6-21)-
68958-87-2	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentapotassium hydrogen, (OC-6-21)-
68958-88-3	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]](8-)]-, pentasodium hydrogen, (OC-6-21)-

(hereinafter referred to as EDTMPA and its salts).

The rule would require each manufacturer and importer initially to report the quantity of each substance manufactured or imported for the person's most recently completed corporate fiscal year, a description of the commercial uses of the substance during the most recently completed corporate fiscal year, the estimated quantity proposed to be manufactured or imported in the current corporate fiscal year, and a description of the intended commercial uses of the substance during the current corporate fiscal year. Follow-up reporting would be required when a person manufactures or imports a substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report, and/or when the person manufactures or imports a substance for a use not previously reported. The Agency solicits comment on the alternative of follow-up reporting when a person manufactures or imports a substance in a quantity 100 or 200 percent greater than the quantity reported in the most recently submitted report, and/or when the person manufactures or imports a substance for a use not previously reported. The Agency also solicits comment on the alternative of requiring annual reporting in lieu of reporting each time the 50 percent production volume increase is met and/or when the substance is manufactured or imported for a use not previously reported.

Because of the potentially large number of substances analogous to the EDTMPA anion, the Agency is announcing its intent that such analogous substances may be added to this proposed rule through notice and comment rulemaking. However, the data received from this proposed rule may allow EPA to make a class judgement as to hazard potential and obviate the need to gather additional data by amending the rule to add substances.

The Agency is aware that duplicative reporting with the Inventory Update rule (40 CFR Part 710 Subpart B) is a possibility. However, if the report for this section 8(a) rule is submitted within the year preceding the start of a reporting period under the Inventory Update Rule (IUR), the submitter will not be required by the IUR to report the same information again for that reporting period. The details of this exemption are set forth in 40 CFR 710.35. For example, the next recurring reporting period under the IUR is from August 25, 1990 to December 23, 1990 for any person who manufactured for commercial purposes 10,000 pounds (4,540 kilograms) or more of a chemical substance at any site owned or controlled by that person at any time during the person's latest complete corporate fiscal year before August 25, 1990. Thus, if a person were required to report for this proposed section 8(a) rule within the year preceding the start of the IUR reporting period just described, such person would be exempt from reporting under the IUR.

There would be separate reports for each listed substance. Initial reports required under this rule would include the following information:

1. Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

2. Company name and headquarters address.

3. Name, address, and telephone number of the principal technical contact.

4. The total quantity (by weight in pounds) of the substance manufactured or imported for the most recently completed corporate fiscal year.

5. A description of the commercial uses of the substance during the most recently completed corporate fiscal year, including the production volume for each use.

6. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.

7. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

Follow-up reports required under this rule would include the following information:

1. Name and Chemical Abstracts Service Registry Number of the

substance for which the report is submitted.

2. Company name and headquarters address.

3. Name, address, and telephone number of the principal technical contact.

4. The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the current corporate fiscal year.

5. A description of the intended commercial uses of the substance during the current corporate fiscal year, including the production volume for each use.

III. Agency Objectives

A. Background

EPA reviewed both the TSCA Chemical Substance Inventory data base and other information sources for EDTMPA and its salts to identify current manufacturers and importers. EDTMPA and its salts appear to be produced and imported in low volumes. They have had a wide variety of uses based on their ability to prevent hydroxyapatite crystal formation. They are used mostly in the industrial treatment of water and in electroplating. They may be used in consumer products.

There are relatively few pathways for significant exposure from current uses of EDTMPA and its salts. These substances are expected to be readily removed in waste water treatment and to be bound to soils and sediments. The wastes from most known uses are expected either to be treated in waste water or disposed of as hazardous waste. There is little exposure during production and the product is marketed as a concentrated solution. EPA is not concerned about exposure during electroplating because this is a small volume end use and the waste generated by this process must be treated as a hazardous waste. However, consumer exposure could occur from potential uses in detergents and other consumer products, from medical diagnostic tests, and from the use of EDTMPA and its salts as scale inhibitors in water systems. These new uses could result in large scale release of EDTMPA into the environment through new pathways. Widespread use of EDTMPA in water treatment could result in exposure through handling concentrated solutions misting from cooling towers, and accidental exposure through improper cooling system installation and maintenance.

B. Reasons for This Proposed Rule

EPA's Office of Toxic Substances (OTS) initiated assessment of the health risks from EDTMPA exposure in response to a TSCA section 8(e) notice reporting osteosarcomas in male rats orally dosed with the substance. A Chemical Hazard Information Profile on EDTMPA was prepared that identified the chemical's use to prevent precipitation of calcium salts as the major potential source of exposure. Subsequent evaluation in the OTS Existing Chemicals Program confirmed the hazard concern.

Overall, the available information on EDTMPA suggests that humans exposed to the substance may be at risk of developing bone cancer, non-neoplastic bone disease, metabolic disturbances, or blood dyscrasias. The salts of EDTMPA can reasonably be expected to have the same health effects as EDTMPA itself. Testing of complex mixtures containing EDTMPA and various salts shows substantially the same health effects as EDTMPA alone. Furthermore, all the salts covered by this proposed rule are highly water soluble and in solution will form the identical anion to that formed by EDTMPA. This anion is the form absorbed into the body and carried through the environment. The accompanying cations are expected to have few physiologic or environmental effects at moderate exposure levels.

EPA requires the information proposed in this rule because EDTMPA has potentially serious hazards to human health. Animal experiments show carcinogenicity and toxicity to bone. The exposure information currently available to the Agency indicates that current potential exposure is quite low. EDTMPA appears to be used in limited quantities in electroplating and in cooling water treatment. The Agency's analysis indicates that these quantities and uses have limited risk associated with them. The Agency is not, however, satisfied that this information on current uses is complete. It is possible that EDTMPA is also used in oil drilling muds and cements, in comfort cooling towers, and in other uses that may present serious and/or widespread exposures. The Agency needs the requested information to confirm the actual current uses of EDTMPA to assess exposures and potential risks. In addition, the Agency needs to know if expanded or new uses with higher exposure replace old uses. This proposed rule would provide the Agency information regarding any major changes in exposure to EDTMPA and its salts so that the Agency can take appropriate action.

IV. Confidentiality

The procedures for submitting a notice with a confidentiality claim are set forth in 40 CFR 704.7 which would apply to this proposed rule. A person submitting a claim of confidentiality attests, among other things, that: My company has taken measures to protect the confidentiality of the information, we intend to continue to take such measures, and the information is not, and has not been, reasonably obtainable by other persons (other than government bodies) without our consent.

V. Economic Impact

EPA estimates that compliance costs will range from $170 to $740 for each notice. The cost estimate for data acquisition assumes that the data are known to or reasonably ascertainable by the person submitting the notice. Costs include:

Data acquisition	$90 to $480
Notice preparation (typing)	$14 to $56
Managerial and legal review	$65 to $195
Total	$169 to $731

VI. Rulemaking Record

The following documents constitute the record for this proposed rule (docket control number OPTS–82032). All documents, including the index to this record, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC. The record includes the following information considered by the Agency in developing this proposed rule:

1. A chemical hazard information profile for EDTMPA.

2. The TSCA section 8(e) notice (8EHO–0683–0483*S*) on EDTMPA (submitted July 15, 1983).

3. Reporting and recordkeeping requirements (40 CFR Part 704).

4. Economic analysis of this proposed rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between the date of this proposal and that designation.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. The Agency has

determined that this proposed rule would not be "major" because it would not have an effect of $100 million or more on the economy. EPA also anticipates that this proposed rule would not have a significant effect on competition, costs, or prices.

This proposed rule was submitted to the Ofifce of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities. EPA expects only one company to report under this rule, well within Regulatory Flexibility Act guidelines. In addition, the rule would exempt "small manufacturers" (as defined in 40 CFR 704.3) from reporting on these substances. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has aassigned OMB Control Number 2070–0067. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous materials, Imports, Recordkeeping and reporting requirements.

Dated: April 21, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 704 be amended as follows:

PART 704—[AMENDED]

a. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

b. By adding § 704.95 to read as follows:

§ 704.95 Phosphonic acid, [1,2-ethanediylbis [nitrilobis (methylene)]] tetrakis- (EDTMPA) and its salts.

(a) *Substances for which reporting is required.* The chemical substances for which reporting is required under this section are:

CAS No.	Chemical name
1429–50–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- (EDTMPA)
15142–96–8	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- hexasodium salt
34274–30–1	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- potassium salt
57011–27–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- ammonium salt
67924–23–6	Cobaltate (6-), [[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
67969–67–9	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)-N,N',O,O'',O''',O''''']-, pentasodium hydrogen, (OC-6-21)-
67989–89–3	Cuprate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68025–39–8	Cobaltate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (6-)-N,N',O,O'',O''',O''''']-, pentaammonium hydrogen, (OC-6-21)-
68188–96–5	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- tetrapotassium salt
68309–98–8	Cadmate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68901–17–7	Phosphonic acid, [1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis- octaammonium salt
68958–86–1	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentaammonium hydrogen, (OC-6-21)-
68958–87–2	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentapotassium hydrogen, (OC-6-21)-
68958–88–3	Nickelate (6-), [[[1,2-ethanediylbis[nitrilobis(methylene)]]tetrakis-[phosphonato]] (8-)]-, pentasodium hydrogen, (OC-6-21)-

(b) *Persons who must report.* Unless exempt as provided in § 704.5, reports must be submitted by:

(1) Persons who manufacture or import any of the substances identified in paragraph (a) of this section.

(2) Persons who propose to manufacture or propose to import any of the substances identified in paragraph (a) of this section. For the purposes of importer reporting under this section, an import site is the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction; the import site may in some cases be the organization's headquarters office in the United States.

(c) *What information to report.* Persons identified in paragraph (b) of this section must report to EPA, for each of the substances identified in paragraph (a) of this section, the following information to the extent known to or reasonably ascertainable by them.

(1) *Initial Report:* (i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The total quantity (by weight in pounds) of the substance manufactured or imported for the person's most recently completed corporate fiscal year.

(v) A description of the commercial uses of the substance during the person's most recently completed corporate fiscal year, including the production volume for each use.

(vi) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(vii) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(2) *Follow-up Report:* (i) Name and Chemical Abstracts Service Registry Number of the substance for which the report is submitted.

(ii) Company name and headquarters address.

(iii) Name, address, and telephone number of the principal technical contact.

(iv) The estimated quantity (by weight in pounds) of the substance proposed to be manufactured or imported in the person's current corporate fiscal year.

(v) A description of the intended commercial uses of the substance during the person's current corporate fiscal year, including the estimated production volume for each use.

(d) *When to report.* (1) Persons specified in paragraph (b)(1) of this

section who are manufacturing or importing the substance as of [insert effective date of final rule] must submit an inital report described in paragraph (c)(1) of this section by [insert date 30 days after the effective date of the final rule].

(2) Persons specified in paragraph (b)(2) of this section must submit an initial report within 30 days after making the management decision described in § 704.3 or by [insert date 30 days after the effective date of the final rule], whichever is later.

(3) Persons specified in paragraph (b) of this section, who submitted a report described in paragraph (c)(1) of this section, must submit a follow-up report described in paragraph (c)(2) of this section within 30 days of making the management decision, described at § 704.3, to do either of the following events:

(i) Manufacture or import the substance in a quantity 50 percent greater than the quantity reported in the most recently submitted report; or

(ii) Manufacture or import the substance for a use not reported for that substance in any previous report.

(e) *Certification.* Persons subject to this section must attach the following statement to any information submitted to EPA in response to this section: "I hereby certify that, to the best of my knowledge and belief, all of the attached information is complete and accurate." This statement must be signed and dated by the company's principal technical contact.

(f) *Recordkeeping.* Persons subject to the reporting requirements of this section must retain documentation of information contained in their reports for a period of 5 years from the date of the submission of the report.

(Approved by the Office of Management and Budget under Control Number 2070–0067)

[FR Doc. 88–9522 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[DA 88–455]

Motions for Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Order granting NECA's request for an extension of time to file proposed revisions to the average schedules for 1988.

SUMMARY: By delegated authority, the Chief of the Common Carrier Bureau adopted an Order on April 4, (Order DA 88–455 (released April 12, 1988)), granting NECA's request that time for filing proposed revisions to the average schedules for 1988 be extended. The Order granted the request and required NECA to file proposed revisions to the average schedules by October 3, 1988, with a proposed effective date of January 1, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision (DA 88–455), adopted April 4, 1988 and released April 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Affairs Office (Room 202), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, Suite 140, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. On June 30, 1987, the National Exchange Carrier Association, Inc. (NECA) proposed revisions to the average schedules that, if approved would have had an effective date of January 1, 1988. Subsequently, the Commission released an Order that declined to accept NECA's proposed revisions, provided corrective guidelines and directed NECA to file proposed revisions, consistent with that Order, no later than May 2, 1988, with an effective date of October 1, 1988 (NECA's Proposed Revisions to the Average Schedules for 1988, Memorandum, Opinion and Order, 3 FCC Rcd 172 (1988)).[1] On February 22, 1988, NECA filed a petition requesting that the time for filing proposed revisions be extended. NECA claimed that additional time was needed to complete the statistical data collection program and secure the additional data necessary to comply with the Commission Order. The Commission granted the request to extend the time for filing proposed revisions to the average schedules until October 3, 1988, with a proposed effective date of January 1, 1989.

[1] Not published in the Federal Register.

Ordering Clauses

2. Accordingly, *it is hereby ordered*, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that NECA shall file proposed revisions to the average schedules on October 3, 1988, with a proposed effective date of January 1, 1989.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88–9359 Filed 4–28–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

48 CFR Parts 1428 and 1452

Acquisition Regulation; Aircraft and General Liability Insurance

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Department of the Interior Acquisition Regulation (DIAR) by prescribing a revised liability insurance clause for use in fixed-price contracts for aircraft services.

DATE: Comments must be received on or before June 28, 1988.

ADDRESS: Comments should be addressed to Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, Room 5526, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior, telephone (202) 343–3433.

SUPPLEMENTARY INFORMATION: The clause entitled, "Risk and Indemnities—Department of the Interior (DIAR 1452.228–71)," is currently prescribed for use in fixed-price contracts for aircraft services with contractor-furnished pilot. This clause, which preceded the Federal Acquisition Regulation (FAR), was promulgated because no suitable clause existed within the Federal Procurement Regulations. The Office of Aircraft Services has determined that the clause at FAR 52.228–10, Vehicular and General Public Liability Insurance, with minor revisions, is more appropriate for establishing liability limits under the Department's aircraft services contracts with contractor-furnished pilots than the current clause. Therefore, this rule

proposes to adapt the clause at FAR 52.228–10 for this purpose. The liability limits proposed in the clause are the same as those prescribed by the Department of Transportation for air taxi operators providing air transporation to the public.

Primary Author

The primary author of this rule is Mr. Jay Hess, Office of Aircraft Services, Department of the Interior, P.O. Box 15428, Boise, Idaho 83715–9998, telephone (208) 554–9480.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291 since it proposes to revise only existing limits of liability on contractors which provide aircraft services with pilot to the Department by adapting an existing clause prescribed in the FAR.

The Department also certifies that this rule will not have a significant effect on a substantial number of small entities since it will affect only those contractors which enter into fixed-price contracts with the Department for aircraft services with furnished pilot.

No information collection requirement are contained in the proposed rule.

List of Subjects in 48 CFR Parts 1428 and 1452

Government procurements.

For the reasons set out in the preamble, Chapter 14 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

Date: March 23, 1988.

1. The authority citations for 48 CFR Parts 1428 and 1452 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1428—BONDS AND INSURANCE

2. Section 1428.306–70(c)(1) is revised to read as follows:

1428.306–70 Insurance for aircraft services contracts.

* * * * *

(c) * * *

(1) The contracting officer shall insert the clause at 1452.228–71, Aircraft and General Liability Insurance—Department of the Interior, in all fixed-price contracts for operation of aircraft with contractor-furnished pilot.

* * * * *

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1452.228–71 is revised to read as follows:

1452.228–71 Aircraft and general public liability.

As prescribed in 1428.306–70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

AIRCRAFT AND GENERAL PUBLIC LIABILITY INSURANCE—DEPARTMENT OF THE INTERIOR ( )

(a) The contractor, at the contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for (1) bodily injury to or death of aircraft passengers of not less than $75,000 for any one passenger and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying $75,000 by 75 percent of the total number of passenger seats installed in the aircraft, (2) bodily injury or death of persons (excluding passengers) of not less than $75,000 for any one person in any one occurrence and $300,000 for each occurrence, and (3) property damage of not less than $100,000 for each occurrence, or (4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in (1) through (3) above.

(b) The contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the contractor's own employees and agents.

(End of clause)

[FR Doc. 88–9504 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–RF–M

Notices

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 10, 1988.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Training laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to hear persons, who have asked to address the committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the Committee will address the pairing or grouping of burley markets and the distribution of the graders among markets for the 1988–89 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee chairperson. Persons, other than members who wish to address the Committee at the meeting should contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2567, prior to the meeting.

Dated: April 25, 1988.

J. Patrick Boyle,

Admininstator, Agricultural Marketing Service.

[FR Doc. 88–9529 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board

Date: May 16–17, 1988

Time:

8:30 a.m. to 3:00 p.m., May 16, 1988
8:00 a.m. to 5:30 p.m., May 17, 1988

Place:

Agricenter International, 7777 Walnut Grove Road, Memphis, Tennessee (May 16).
Delta Branch Experiment Station, Stoneville, Mississippi (May 17)

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: Review diversified farming program and operations that have had a positive economic impact on the area.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684.

Done in Washington, DC, this 21st day of April 1988.

John Patrick Jordan,

Administrator.

[FR Doc. 88–9532 Filed 4–28–88; 8:45 am]

BILLING CODE 3410–22–M

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; Establishment of New Record System

AGENCY: Central Intelligence Agency.

ACTION: Notice of new system of records subject to the Privacy Act.

SUMMARY: The Central Intelligence Agency is adding a new system of records to its existing inventory of record systems subject to the Privacy Act as amended (5 U.S.C. 552a).

EFFECTIVE DATES: The proposed action will be effective without further notice on or before May 31, 1988, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, telephone: (703) 351–2083.

SUPPLEMENTARY INFORMATION: The new record system identified as CIA–71 is entitled: National Intelligence Council Records System. A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted pursuant to section 4.b. of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Dated: April 14, 1988.

R. M. Huffstutler,

Deputy Director for Administration.

SYSTEM NAME:

National Intelligence Council (NIC) Records System.

SYSTEM LOCATION:

Central Intelligence Agency, Washington, D.C. 20505

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have an employment, detailee, liaison, contractual or operational relationship with the Central Intelligence Agency or with Intelligence Community agencies, and individuals who are of foreign intelligence, counterintelligence or security interest to the CIA or Intelligence Community, including individuals identified as being involved in activities related to intelligence matters such as the possible compromise of classified information or activities otherwise implicating intelligence sources and methods and other information protected by statute or Executive order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; intelligence requirements,

analysis, and reporting; National Intelligence Council operational records; bibliographic information about individuals of intelligence or security interest; articles, public-source data, and other published information on individuals and events of interest to the CIA; actual or purported compromises of classified information; countermeasures in connection therewith; investigative data related to compromises of classified information; other policy and operational data based primarily on foreign intelligence, counterintelligence, and security reporting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended—Pub. L. 80–253.

Central Intelligence Agency Act of 1949, as amended—Pub. L. 81–110.

Executive Order 12333.

Executive Order 12356.

Section 506(a), Federal Records Act of 1950 (44 U.S.C. section 3101).

Intelligence Authorization Act for Fiscal Year 1988—Pub. L. 100–178.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide classified and unclassified information within the Central Intelligence Agency and to appropriate Intelligence Community and U.S. Government officials for the conduct of authorized activities.

To inform and provide information to U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure upon intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

A record from this system of records could be disclosed as a "routine use" in order to facilitate any security, employment, detail, liaison, or contractual decision by the CIA or any U.S. Government organization. Records further could be disclosed in response to or by direction of a court order, or where there is an indication of a violation or potential violation of law, whether civil, criminal, or administrative in nature, to the appropriate Federal, state, or local agency charged with the responsibility of prosecuting such violation or charged with implementing or enforcing a statute or law, regulation, or order issued pursuant thereto. Records also could be disclosed to other agencies if necessary for the protection of intelligence sources and methods and in support of intelligence analysis and reporting. Additionally, records from this system could be used to prepare periodic substantive reports for U.S. Government officials related to the control and dissemination of classified information.

The statement of general routine uses applicable to and incorporated by reference into systems of records maintained by the Central Intelligence Agency are incorporated into this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic media integral to automated information systems operated by the National Intelligence Council

RETRIEVABILITY:

By category of information contained therein, including by name.

SAFEGUARDS:

Files are maintained in accordance with Executive Order 12356 and Information Security Oversight Office Directive Number 1.

RETENTION AND DISPOSAL:

Files are destroyed in accordance with Chapters 29 and 33 of Title 44 United States Code and Information Security Oversight Office Directive Number 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, National Intelligence Council, Central Intelligence Agency, Washington, D.C. 20505.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

Identification requirements are specified in the Central Intelligence Agency rules published in the Code of Federal Regulations (32 CFR 1901.13). Individuals must comply with these rules.

RECORD ACCESS PROCEDURE:

Request from individuals should be addressed as indicated in the Notification Procedure section above.

CONTESTING RECORD PROCEDURES:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by the Central Intelligence Agency concerning access to or correction of the records, are promulgated in the Central Intelligence Agency rules section of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals themselves; other U.S. agencies and organizations; public media, including books, periodicals, newspapers, and broadcast transcripts; unclassified and classified official reporting, intelligence source documents, investigative reports, and correspondence.

[FR Doc. 88–9501 Filed 4–28–88; 8:45 am]

BILLING CODE 6310–02–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Advisory Committee; Availability of Report on Closed Meetings

AGENCY: Department of Commerce.

ACTION: Announcing public availability of report on closed meetings of advisory committees.

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues SE., Washington, DC 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230 Telephone (202) 377–3271.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1987 of 38 committees and their subcommittees, the names of which are listed below:

Automated Manufacturing Equipment Technical Advisory Committee

Biotechnology Technical Advisory Committee

Committee of Chairmen of Industry Advisory Committees for Trade Policy Matters (TPM)

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee

Computer Systems Technical Advisory Committee

—Hardware Subcommittee

—Software Subcommittee
—Licensing Procedures and Regulations Subcommittee
Electronic Instrumentation Technical Advisory Committee
ISAC on Capital Goods for TPM
ISAC on Chemicals and Allied Products for TPM
—Subcommittee on Advanced Materials
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
—Subcommittee on Multilateral Trade Negotiations
ISAC on Energy for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Material and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
— U.S. Canada Free Trade Agreement Subcommittee
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
Importers and Retailers' Textile Advisory Committee
Industry Functional Advisory Committee on Customs Matters for TPM
Industry Functional Advisory Committee on Intellectual Property Rights for TPM
Industry Functional Advisory Committee on Standards for TPM
—Subcommittee of International Standards
ISAC on Aerospace Equipment for TPM
—Government Supports Subcommittee
—Military Trade Subcommittee
—Purchase/Finance Subcommittee
—Space Equipment Subcommittee
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
Materials Technical Advisory Committee
Militarily Critical Technologies List Technical Advisory Committee
National Medal of Technology Nomination Evaluation Committee
President's Export Council
—International Competitiveness and Productivity Subcommittee
—Foreign Trade Practices and Negotiations Subcommittee
Subcommittee on Export Administration
Semiconductor Technical Advisory Committee
Telecommunications Equipment Technical Advisory Committee
—Fiber Optics Subcommittee
—Radio Subcommittee
—Switching Subcommittee
Transportation and Related Equipment Technical Advisory Committee
Travel and Tourism Advisory Board.

FOR FURTHER INFORMATION CONTACT: Jan Jivatode, Management Analyst, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377–3271.

April 22, 1988.

Jan Jivatode,

Management Support Division, Office of Management and Organization.

[FR Doc. 88–9500 Filed 4–28–88; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–706]

Final Determination of Sales at Less Than Fair Value: Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) from Japan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to a United States industry.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Debra Conner or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377–1778 or 377–2613.

Final Determination

We have determined that nitrile rubber from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of an affirmative preliminary determination (53 FR 4193, February 12, 1988) a supplemental response was filed by the respondent on February 11, 1988.

A public hearing was not requested. Final comments were submitted by both the petitioner and respondent.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the United States annotated *(TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is butadiene acrylonitrile copolymer synthetic rubber not containing fillers, pigments, or rubber-processing chemicals, currently provided for under the *TSUSA* item number 446.1511 and currently classifiable under HS item number 4002.59.00.

Period of Investigation

Based on petitioner's claim that sales and imports of nitrile rubber are traditionally strongest in the early months of each year, we extended the period of investigation for Nippon Zeon to January 1, 1987–September 30, 1987, as permitted by 19 CFR 353.38(a).

Such or Similar Comparisons

We determined that Nippon Zeon had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. For all U.S. sales examined, there were sales

of identical merchandise in the home market.

Fair Value Comparisons

To determine whether sales of nitrile rubber from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

United States Price

In its original response to our questionnaire, Nippon Zeon claimed that its U.S. sales were made through an unrelated company, Nichimen Japan-Nichimen America (Nichimen), and that Nichimen acted as Nippon Zeon's agent. Nippon Zeon reported the prices charged by Nichimen in the United States and the commission paid by Nippon Zeon to Nichimen. At the Department's request, Nippon Zeon provided a copy of its agreement with Nichimen and a fuller description of the commission paid to Nichimen.

Based on our verification of the agreement, we have determined that Nichimen does not act as Nippon Zeon's agent. The agreement between Nichimen and Nippon Zeon clearly illustrates that a "sale" is made from Nippon Zeon to Nichimen. Nichimen pays for the merchandise and resells the merchandise to an unrelated customer in the United States. While Nichimen provides certain services to Nippon Zeon, Nippon Zeon does not control the activities of Nichimen. In particular, Nippon Zeon controls pricing to the U.S. customer.

Therefore, we have determined that Nichimen is not Nippon Zeon's agent and that the price Nippon Zeon charges Nichimen is the appropriate sales price to be used. This is in accordance with the Department's usual practice in cases where a manufacturer is aware of the destination of its goods when such goods are sold to an unrelated trading company. *See, e.g., Certain Forged Steel Crankshafts from Japan*, 52 FR 36984 (October 2, 1987); *Birch Three-Ply Doorskins from Japan*, 47 FR 50537 (November 8, 1982).

At the Department's request, Nippon Zeon provided a revised U.S. sales listing on February 11, 1988 showing the invoiced price from Nippon Zeon to Nichimen.

We have calculated purchase price by deducting from Nippon Zeon's invoiced price to Nichimen, foreign inland freight and insurance, and export brokerage and handling. We also made an adjustment for post-sale price adjustments.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on Nippon Zeon's packed delivered prices to unrelated customers in the home market. We made deductions from the home market price where appropriate, for inland freight, insurance and rebates. In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs. We also made adjustments to the home market price, where appropriate, for differences in credit expenses pursuant to 19 CFR 353.15.

Nippon Zeon claimed adjustments for warehousing, indirect selling expenses, inventory carrying costs, technical services, and sale promotion expenses in home market. With respect to the adjustments for warehousing, technical services and sale promotion activities, we have denied these claims because respondent has not demonstrated that they are directly related to home market sals, in accordance with 19 CFR 353.15.

Moreover, we have not allowed adjustments for indriect selling expenses because U.S. sales were treated as purchase price transactions and no commission was recognized on those sales. The claim for inventory carrying costs was withdrawn at verification by Nippon Zeon officials.

Currency Conversion

Since all U.S. sales were purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1).

Critical Circumstances

On Septemer 1, 1987, the petitioners alleged that "critical circumstances" exist within the meaning of section 733(e) of the Act with respect to nitrile rubber from Japan. In determining whether critical circumstances exist, that section provides that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject to investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In order to determine whether massive imports have taken place over a short period of time we looked at the volume and value of the imports.

In this proceeding, we examined import statistics provided by the petitioner and the respondent, as well as U.S. government collected data. Based on this information, we believe that massive imports have not occurred. Having so concluded, it is not necessary for us to address the issue of whether there is a history of dumping or whether the importers should have known that the merchandise was being sold at less than fair value.

Based on the above information, we determine that critical circumstances do not exist with respect to imports of nitrile rubber from Japan.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and source documents.

Interested Party Comments

Comment 1. Respondent argues that the Japanese trading company composed of Nichimen Corporation ("Nichimen Japan") and Nichimen America, Inc. ("Nichimen America") (collectively, "Nichimen") acts as an agent on Nippon Zeon's sales of nitrile rubber to the United States.

Petitioner argues that Nichimen is not acting as an agent but rather, is the first unrelated purchaser of nitrile rubber.

DOC Position. The Department agrees with the petitioner. There is no evidence to suggest that Nichimen is related to Nippon Zeon, or that the relationship differs in any significant way from the usual relationship between a manufacturer and a trading company. Furthermore, our review of the agreement submitted by respondent and of supporting documents available at verification did not present facts inconsistent with the application of our usual practice in cases where a manufacturer is aware of the destination of its goods when those goods are sold to an unrelated trading company. (See the "United States Price" section above.)

Comment 2. Petitioner argues that the correct U.S. price is the price from Nippon Zeon to Nichimen Japan.

Respondent argues that the correct U.S. price is the price to Nichimen's unrelated customer in the United States.

DOC Position. The Department agrees with the petitioner. As noted above in the "United States Price" section of this

notice, in cases where a manufacturer sells to an unrelated trading company with knowledge of the ultimate destination of merchandise under investigation, it is our usual practice to consider that sale as the first sale to an unrelated party. We then use that sale to determine the purchase price with respect to which all adjustments and calculations will be made.

Comment 3. Petitioner submits that the Department should adjust the U.S. price by the amount of a post-sale adjustment.

DOC Position. The Department agrees with the petitioner. Under the agreement between Nippon Zeon and Nichimen a post-sale adjustment is made to the invoiced price. The invoiced price is adjusted to reflect currency adjustments and changes in freight costs. Because this adjustment increases or reduces the return to Nippon Zeon on its U.S. sales, we have included it in the calculation of U.S. price.

Comment 4. Respondent submits that the Department should terminate the investigation because the petitioner lacks standing.

DOC Position. The Department disagrees with the respondent. No domestic producer has stated its opposition to the investigation. *See, e.g., Fabric Expanded Neoprene Laminate from Japan,* 50 FR 23488 (6/4/85); *Offshore Platform Jackets and Piles from Japan,* 51 FR 11788 (4/7/86).

Comment 5. Respondent submits that all home market charges claimed (with the exception of inventory carrying costs) be used in the calculation of foreign market value.

Petitioner argues that direct selling expenses, advertising and sales promotion, technical services, warehousing, indirect selling expenses, and inland freight should be rejected and not used in the calculation of foreign market value.

DOC Position. The Department has allowed inland freight costs as an adjustment to the home market price since they were fully supported at verification.

The Department has not allowed adjustments for the remaining charges as explained in the "Foreign Market Value" section of this notice.

Comment 6. Petitioner submits that the Department should determine that critical circumstances exist based on the import statistics from the Journal of Commerce.

Respondent submits that the Department should determine that critical circumstances do not exist based on the import statistics provided by its sole U.S. importer, Nichiemen.

DOC Position. The Department agrees with the respondent. Information we have obtained indicates that Nippon Zeon's exports of nitrile rubber represent approximately 95% of all imports from Japan. For this reason, the Department has used Nichimen's verified import statistics to form the basis of our analysis in the determination of critical circumstances.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of nitrile rubber from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of nitrile rubber from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Nippon Zeon Co., Ltd	146.50
All others	146.50

This suspension of liquidation covers imports of nitrile rubber as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on nitrile rubber from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 25, 1988.

[FR Doc. 88-9533 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-OS-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, with respect to certain flat-rolled steel.

DATE: Comments must be submitted on or before May 9, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Complaince, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Korea, and U.S.-Brazil arrangements, and of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet the demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for the following flat-rolled steel products, whether in coils or cut-to-length: (1) Certain AISI grade C1010

mechanically capped or rimmed steel, with widths ranging from 12 to 72 inches and thicknesses ranging from 0.187 to 0.500 inch; and (2) certain AISI grades C1015 and C1020 killed, mechanically capped or rimmed plate, with widths ranging from 18 to 72 inches, and thicknesses ranging from 0.375 to 0.625 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 9, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 25, 1988.

[FR Doc. 88-9534 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to: Fees, Permits and Regulations Division (F/TS21), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fisher Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1988 have been received from the Governments shown below.

Dated: April 21, 1988.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and Fishery	Regional Fishery Management Councils
ABS: Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA: Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA: Gulf of Alaska	North Pacific.
NWA: Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA: Snails (Bering Sea).	North Pacific.
WOC: Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS: Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code	Fishing Operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
(*)	Vessel(s) in support of U.S. vessels Joint Venture).
(**)	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

JOINT VENTURE—THE WASHINGTON, OREGON AND CALIFORNIA TRAWL FISHERIES (WOC) PACIFIC HAKE REQUEST

Country	Directed	Jt venture	American partner
China	5,000	10,000	Alaska World Trade Corp/Anchorage, AK; China Pacific Ventures/Seattle, WA.
Japan	5,000	10,000	Northern Deep Sea Fisheries/Seattle, WA.
Koreaw	5,300	5,300	Dona JV Fisheries/Seattle, WA.
Poland	51,000	51,000	Quest Export Trading Co./Coos Bay, OR; Profish Int'l/Seattle, WA; Alaska Pacific Int'l/Seattle, WA.
USSR	45,000	45,000	Marine Resources Co. Int'l/Seattle, WA.

This notice confirms the amounts requested by the applying nation as of April 18, 1988. Some applicants had indicated changes might be made in the amounts requested earlier.

[FR Doc. 88-9503 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Trademark Affairs Public Advisory Committee; Open Meeting

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 4:00 p.m. on June 7, 1988.

Place: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2 Building, Room 912, Arlington, Virginia.

Status: The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come-first-served basis. If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

Matters to be considered: The agenda for the meeting is as follows:

(1) Implementation of Proposed Intent-to-Use Legislation
(2) Automation Activities
(3) Application Processing and Prosecution

Contact person for more information: For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2–910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–7464.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88–9542 Filed 4–28–88; 8:45 am]

BILLING CODE 3510–16–M

CONSUMER PRODUCT SAFETY COMMISSION

Development of Voluntary Standard for All-Terrain Vehicles; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The major members of the all-terrain vehicle ("ATV") industry have scheduled a meeting on May 4, 1988, for planning and further development of a voluntary safety standard for ATVs. One of the primary purposes of the meeting is to identify the areas that should be given first priority in developing a voluntary standard and to develop a schedule for dealing with these areas. Interested members of the public are invited to attend the meeting and observe or participate in the development of the standard. Persons wishing to attend the meeting or to be notified of future meetings of the committee should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256.

DATE: The meeting is scheduled for 10:00 a.m. on May 4, 1988.

ADDRESS: The meeting will be held at the Consumer Product Safety Commission, Room 556, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Nicholas Marchica, Voluntary Standards Coordinator, Office of the Executive Director, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492–6550.

SUPPLEMENTARY INFORMATION:

Background

The Commisison for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the oeprator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register.** 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States v. American Honda Motor Co., Inc. et al.,* Civil Action No. 87–3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contain provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the proposed final consent decrees, which have not yet been approved by the Court, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees. Although the final consent decrees have not yet been approved by the Court, the meeting that is announced in this notice is in furtherance of the agreement provided in the proposed final decrees.

Nature of Meeting

Commission policy requires that all voluntary standards meetings attended by the CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, persons wishing to attend the meeting should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256, by May 2, 1988. In addition, persons who wish to participate in the development of the standard should notify Mr. Golde of that fact, so they can receive notice of additional meetings, etc., as they are scheduled.

The goal of the four-month period provided in the consent decrees for the development of a standard by the industry is to develop at least a preliminary consensus within that time. Work on some aspects of a standard may continue after that period. The Commission's staff has provided the industry with some proposed provisions for a standard. The Commission believes that the dynamic stability elements of the proposed standard are needed for safety and should not be weakened.

One of the primary purposes of the May 4, 1988, meeting, therefore, is to identify the areas that should be given first priority in developing a standard and to plan a schedule for dealing with these areas within the agreed-upon time. Because of the need for the industry to develop the standard within four months, it may not be practical to announce all subsequent meetings of the voluntary standard development committee in the **Federal Register.** However, all persons who indicate a desire to participate in the development of the standard will be notified of such meetings, and other parties may contact the Commission's Office of the Secretary, at (301) 492–6800, to determine when standards development meetings are placed on the Commission's Public Calendar.

As noted above, the first meeting will be held at the Commission's offices at 5401 Westbard Avenue, Bethesda, Maryland (Room 556). The Commission expects that most of the subsequent

plenary meetings will be in the Washington, DC, metropolitan area. However, some meetings may be in California for the convenience of participants who are located on the west coast or in Japan.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative or irrelevant comments.

Dated: April 27, 1988.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 88-9668 Filed 4-28-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Orders: Meadows Realty Co. et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Consent Order with Meadows Realty Co. (Formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc. and Opportunity for Public Comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Meadows Realty Company (formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc. (collectively San Joaquin). The agreement proposes to resolve matters relating to San Joaquin's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 27, 1981. If this Consent Order is approved, within thirty days of the effective date San Joaquin will pay to the DOE a total of $1.25 million plus interest accruing from January 1, 1988.

ERA will then petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V, where any person who claims to have suffered injury from San Joaquin's alleged overcharges would have the opportunity to submit a claim.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Order, or renegotiate the agreement and, if successful, issue the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Ann C. Grover, Assistant Director of Administrative Litigation, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4387.

SUPPLEMENTARY INFORMATION: San Joaquin is a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal petroleum price and allocation regulations. During the period covered by this proposed Order (September 1973 through January 27, 1981), San Joaquin engaged in, among other things, the refining of the crude oil and the sale of residual fuel oil, middle distillates, and other refined petroleum products.

ERA conducted audits to determine San Joaquin's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order. As a result of the audits, disputes arose between San Joaquin and ERA concerning San Joaquin's compliance with applicable Federal petroleum price and allocation regulations. The major regulatory area of dispute concerns San Joaquin's pricing of refined petroleum products subject to price controls. On September 21, 1982, ERA issued a Proposed Remedial Order (PRO) to San Joaquin, alleging that San Joaquin overcharged its customers in sales of refined petroleum products, which San Joaquin contested. Following proceedings before DOE's Office of Hearings and Appeals (OHA), OHA Case No. HRO-0071, the PRO was remanded to ERA for recalculation of the overcharges in accordance with an interlocutory order issued by OHA. On February 27, 1987, ERA issued a Revised PRO to San Joaquin, OHA Case No. KRO-0480.

The Revised PRO, as further amended in the course of the litigation, alleges overcharges of $742,433. With interest that could be assessed on that overcharge amount, San Joaquin's maximum potential liability for refunds is approximately $2.3 million. San Joaquin has raised a number of objections to the manner in which ERA applied the refiner pricing regulations in determining the amount of the overcharges. In addition, San Joaquin has filed an Application for Exception, OHA Case No. HEE-0097, relating to one of the matters which formed the basis for the charges in the PRO and the Revised PRO. If San Joaquin's objections to the Revised PRO or its Application for Exception were to be granted, the overcharges would be substantially reduced.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the aduit and San Joaquin's request for exception relief, and appropriate settlement compromises related to those issues. In evaluating the total settlement amount for San Joaquin's regulatory violations, in addition to the analysis of litigation risks, ERA took into account such factors as the number and complexity of the legal and factual issues, and the time and expense required for the government to fully litigate every issue in order to obtain any recovery. Based on all of these considerations, ERA concludes that the resolution of these matters for $1.25 million is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, within thirty days of the effective date of the Consent Order, San Joaquin will pay the principal amount of $1.25 million, plus interest, to DOE. If the settlement is not made final by August 11, 1988, San Joaquin may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that San Joaquin provide necessary information to OHA. Unless specifically excluded, San Joaquin and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order, including San Joaquin's Application for Exception. The proposed Order does not affect the right of any other party to take action against San Joaquin, or of San Joaquin or the DOE to take action against any other party. This agreement only resovles certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against San Joaquin.

Submission of written comments: The proposed Consent Order cannot be made effective until the conclusion of

the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to San Joaquin Consent Order Comments, RG–32, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585.

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC on April 22, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 88–9557 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–32–NG]

Order Granting Blanket Authorization To Import Natural Gas; Pacific Interstate Transmission Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Ecomomic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Pacific Interstate Transmission Company (PIT) authorization to import Canadian natural gas for resale to Southern California Gas Company. The order issued in ERA Docket No. 87–32–NG authorizes PIT to import up to 640,000 Mcf of gas per day over two-year period beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 21, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–9489 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–18–NG]

Application to Import and Export Natural Gas to Canada; Reliance Gas Marketing Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 31, 1988, of an application filed by Reliance Gas Marketing Company (Reliance Marketing) to import up to 100 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic U.S. natural gas over a two-year term beginning on the date of first delivery. Reliance Marketing, a Delaware corporation whose principal place of business is in Denver, Colorado, would import or export gas for its own account or act as a broker for both U.S. and Canadian purchasers and suppliers. Reliance Marketing intends to utilize existing pipeline facilities for transportation of the volumes to be imported or exported. Reliance Marketing also proposes to submit quarterly reports detailing each transaction.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 31, 1988.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Under the blanket import and export authority sought, Reliance Marketing intends to make natural gas sales to either United States or Canadian customers on both a firm and interruptible spot basis. The specific terms of each import or export sale would be negotiated on an individual basis, including price and volume. Reliance Marketing asserts that the sale of Canadian natural gas imports will be made pursuant to terms dictated by the prevailing economic conditions in the domestic market and that surplus U.S. natural gas supplies will be exported to Canada on the basis of their competitiveness and need by U.S. purchasers.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issue determined by the Administrator to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the import authority and on the domestic need for the gas in their responses on the requested export authority. The applicant asserts that this import and export arrangement will be in the public interest in that the pricing terms for each import or export sale must be competitive in the U.S. and Canadian gas markets served or no sales will be made. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in

determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., May 31, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Reliance Marketing's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 22, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–9488 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP88–332–000, et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP88–332–000]

April 25, 1988.

Take notice that on April 11, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88–332–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a limited-term interruptible sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests a limited-term certificate authorizing the sale for resale of natural gas on an interruptible basis both on-system and off-system and authorizing the delivery of such natural gas on a direct sale basis. El Paso states that the proposed interruptible sales service represents an opportunity to obtain the additional flexibility required to sell natural gas which may otherwise be in excess of its customers requirements. El Paso further states that the interruptible sales service would be available to any purchaser on or off El Paso's system to the extent it has a surplus of system supply gas. The proposed sales service would be interruptible as to supply and pipeline capacity, it is explained. It is further explained that the interruptible sales service would not be subject to El Paso's curtailment plan.

El Paso explains that the interruptible sales service would be rendered under proposed initial Rate Schedule IS–1. The purchaser would be required to execute a service agreement to purchase natural gas under Rate Schedule IS–1, it is explained. El Paso requests blanket type pre-granted authority to abandon the sale on the date specified in the service agreement.

El Paso proposes to charge a negotiated rate for the interruptible sales service which would fall between a stated maximum and minimum rate. El Paso explains that the maximum rate would be a 100 percent load factor rate for the zone in which delivery from El Paso's system occurs. El Paso further explains that the minimum rate would be equal to El Paso's actual weighted average cost of gas purchased for the month in which the gas is delivered, plus all variable costs incurred in rendering the service, the GRI surcharge, and the ACA charge.

Comment date: May 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Gas Transmission Company

[Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001, and CP87–21–002]

April 25, 1988.

Take notice that on April 21, 1988, Pacific Gas Transmission Company (Pacific Gas), 160 Spear Street, San Francisco, California 94105–1570 filed Docket Nos. CP86–636–003, CP86–735–001, CP87–10–001, CP87–66–001, CP87–67–001, CP87–84–001, and CP87–21–002, to amend orders issued October 10, 1986, April 22, 1987, May 8, 1987, May 8, 1987, July 22, 1987, July 22, 1987, and October 16, 1987, respectively, to continue limited-term transportation service for various industrial end-users and marketers, for a term which would expire one year from the effective date of authorization or when Pacific Gas commences open access transportation under Part 284 of the Commission's regulations, whichever occurs first, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pacific Gas requests authority to continue transportation service for 7 industrial end-users and marketers authorized in the dockets cited above. It is stated that Pacific Gas ceased filing new applications for section 7(c) transportation when it filed its application for a blanket certificate under Order No. 436 in Docket No. CP87–159–000, on January 13, 1987. It is further stated that Pacific Gas wishes to stress that this current filing for an amendment to the existing certificates in no way "re-opens" its section 7(c) program but merely seeks to maximize the utilization of its system until such time as it can become an open access transporter under section 311 to which Pacific Gas has agreed as part of the proposed settlement of its general rate case in Docket No. RP87–62–000.

Pacific Gas requests expedited consideration of this application

because the authorizations are about to expire. It is stated that the authorization in Docket No. CP86–735–000 would expire April 21, 1988, and the authorization in Docket Nos. CP87–10–00 and CP87–66–000 would expire May 7, 1988. It is stated that the instant application to amend the existing certificates seeks only to modify the term of those certificates; no other changes are requested. It is further stated that such modification is desired because Pacific Gas wishes to continue transporting gas for others under section 7(c) on an interim basis. Pacific Gas avers that it plans to implement open access transportation in connection with a satisfactory resolution of its general rate case.

Comment date: May 16, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. SEMCO Energy Services, Inc.

[Docket No. CI87–737–001]

April 26, 1988.

Take notice that on April 14, 1988, SEMCO Energy Services, Inc. (SEMCO), of 405 Water Street, Port Huron Michigan 48061, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for an unlimited term and to include blanket certificate and abandonment authority on behalf of producer-suppliers selling gas to SEMCO or through SEMCO as agent, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 10, 1988, in accordance with Standard Paragraph J at the end of the notice.

4. Development Associates, Inc.

[Docket No. CI88–422–000]

April 26, 1988.

Take notice that on April 14, 1988 Development Associates, Inc. (Applicant), of East 1411 Mission Avenue, Spokane, Washington 92202, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 10, 1988, in accordance with Standard Paragrph J at the end of this notice.

Diamon Shamrock Offshore Partners Limited Partnership

[Docket Nos. CI88–384–000 and CI88–400–000]

April 26, 1988.

Take notice that on March 28, 1988, as supplemented on April 12, 1988, Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), 717 North Harwood Street, Dallas, TX 75201, filed applications pursuant to section 7 of the Natural Gas Act and section 2.77 of the Commission's Regulations requesting authorization to permanently abandon sales of gas to United Gas Pipe Line Company (United) which were previously certificated by the Commisison. Diamond Shamrock also requests that the Commission issue a blanket certificate with pregranted abandonment to make sales for resale of such released gas in interstate commerce. Diamond Shamrock states that if the Commission determines that an unlimited blanket certificate with pregranted abandonment for this gas cannot be granted, Diamond Shamrock requests that at a minimum such authorization be for five years from the date of issuance of the blanket certificate. Diamond Shamrock requests that its applications be considered on an expedited basis under procedures established by Order No. 436.

Diamond Shamrock also requests a waiver of the Commission's regulations to permit changes in purchasers and in price for this gas without requiring filings under Parts 154, 157 and 271 of the Regulations. Diamond Shamrock requests that no reports on the subsequent sale of this gas be required; however, if the Commission determines that reports on this gas are necessary, Diamon Shamrock requests that such reports be only required on an annual basis to be filed 90 days aftter the end of the calendar year for that prior year.

Diamond Shamrock states that the following describes the location, NGPA pricing category and estimated average daily deliverability (in Mcf) covered by the subject applications:

High Island block offshore Texas	NGPA pricing category (section)	Deliverability (Mcf/d)
A–442/443	102(d)	15,500
A–471A	102(d)	700
A–471B	109	17,000
Total		33,200

Diamond Shamrock states that through its predecessors it executed with United a contract dated June 30, 1981, for the sale of gas from High Island Block A–442, and a contract dated October 6, 1981, for the sale of production from High Island Block A–471. These two sales were certificated in Docket Nos. CI81–448–000 and CI84–450–000, respectively. Diamond Shamrock states that through a succession approved by the Commission, these contracts were designated Diamond Shamrock Rate Schedule Nos. 15 and 23, respectively.

Over the past four years, Diamond Shamrock states it has experienced a significant reduction in purchases of gas by United under the subject contracts, among others. Diamond Shamrock states that in order to resolve their differences, on March 15, 1988, Diamond Shamrock and United executed a Compromise and Settlement Agreement (Agreement). Pursuant to the Agreement, Diamond Shamrock states United and Diamond Shamrock agreed to suspend all obligations under the contracts at issue herein pending approval by the Commission of a request for permanent abandonment. Furthermore, under the Agreement Diamond Shamrock states that it is required to file within thirty days an application for permanent abandonment authorization. Upon the date abandonment authorization becomes final and non-appealable for sales under these two contracts, Diamond Shamrock states that the two contracts will terminate.

Diamond Shamrock states that its proposed abandonment and blanket certificate with pregranted abandonment are in the public interest and should be approved. The basis of Diamond Shamrock's proposal is the Agreement between Diamond Shamrock and United providing for the termination of the June 1981 and October 1981 contracts which is part of an overall settlement of numerous issues between Diamond Shamrock and United, including but not limited to take-or-pay issues. Diamond Shamrock states that by letter dated March 25, 1988, attached as Exhibit Z–1 to the applications, United supports the proposed abandonment and confirms that such abandonment will not adversely affect United's ability to meet the anticipated demands of its sales customers.

Comment date: May 10, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said

filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9564 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2339-000]

Eileen M. Beck; Notice of Filing

April 26, 1988.

Take notice that on April 18, 1988, Eileen M. Beck tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation
Assistant Secretary and Assistant Treasurer.	Monongahela Power Co.
Assistant Secretary	The Potomac Edison Co.
Assistant Secretary	West Penn Power Co.
Secretary	Allegheny Generating Co.
Secretary and Asst. Treasurer.	Allegheny Power System, Inc.
Secretary and Asst. Treasurer.	Allegheny Power Service Corp.
Assistant Secretary	Allegheny Pittsburgh Coal Co.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9561 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-358-000]

Indiana Michigan Power Co.; Notice of Filing

April 26, 1988

Take notice that on April 21, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Indiana Michigan Power Company (I&M), formerly know as Indiana & Michigan Electric Company, which is an AEP affiliate operating subsidiary, Modification No. 17 dated March 1, 1988 to the Interconnection Agreement dated June 20, 1956 (1956 Agreement) between Commonwealth Edison Company (Edison) and I&M, I&M's Rate Schedule FERC No. 20 and Edison's rate schedule FERC No. 2.

This Modification updates several of the Service Schedules which are presently part of the 1956 Agreement between Edison and I&M. These revisions to the 1956 Agreement are made to reflect the present environment in which interconnection transactions now take place and are also necessary to insure uniform rates by the AEP System Companies for the same service to unaffiliated companies. The Service Schedules affected by this Modification No. 17 are Emergency Service, Interchange Power and Short Term Power.

Copies of the filing were served upon Edison, Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and the Illinois Commerce Commission.

Commonwealth Edison Company has filed a Certificate of Concurrence for this filing.

Any person desiring to be heard or to protest said filing shouild file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9562 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-273-000]

New England Power Pool; Notice of Filing

April 26, 1988.

Take notice that on April 20, 1988, New England Power Pool (NEPOOL) tendered for filing a supplement to its New Unit Amendment that was filed with the Commission on March 1, 1988. NEPOOL states that the materials were filed to assist the NEPOOL Executive Committee in understanding the New Unit Amendment and to aid the Commission staff in its analysis of the materials.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 9, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9563 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-005]

Northern Natural Gas Company, Division of Enron Corp.; Sale of Natural Gas

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Florida Gas Transmission Company (FGT).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* FGT is a division of Citrus Corp., an Enron Corporation Joint Venture; Northern is a division of Enron Corporation.

(4) *Term of Sale:* Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:* Daily Quantity 100,000 MMBtu. Estimated Total—1 Bcf per month.

(6) *Rate:* $1.42 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9565 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-006]

Northern Natural Gas Company, Division of Enron Crop.; Sale of Natural Gas

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer:* Transwestern Pipeline Company (Transwestern).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* Transwestern is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.

(4) *Term of Sale:* Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities: Daily Quantity* 150,000 MMBtu. *Estimated Total:* 1 Bcf per month.

(6) *Rate:* $1.42 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issurance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9566 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

Northern Natural Gas Company, Division of Enron Corp.; Sale of Natural Gas

[Docket No. CP88-2-007]

April 22, 1988.

Take notice that on April 12, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

(1) *Name of Buyer*: Enron Industrial Gas Company (Enron Industrial).

(2) *Location of Buyer*: Houston, Texas.

(3) *Affiliation between Northern and Buyer*: Enron Industrial is a subsidiary of Enron Corporation; Northern is a Division of Enron Corporation.

(4) *Term of Sale*: Through April 1988 and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities*: *Daily Quantity*: 200,000 MMBtu. *Estimated Total*: 1 Bcf per month.

(6) *Rate*: $1.35 per MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9567 Filed 4-28-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Natural Gas Transportation Task Group Coordinating Subcommittee on Petroleum Storage & Transportation National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, May 19, 1988, 9:00 a.m.

Place: National Petroleum Council, 1625 K Street, NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss gas pipeline survey and review progress on individual assignments.

Tentative Agenda:

—Opening remarks by Chairman and Government Cochairman
—Discuss the gas pipeline survey
—Review progress on individual assignments
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-9487 Filed 4-28-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Case Filed; Week of January 22 through 29, 1988

During the Week of January 22 through January 29, 1988, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 22 through January 29, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 19, 1988	Economic Regulatory Administration, Washington, DC.	KRZ-0080	Interlocutory. If granted: The October 2, 1987, Decision and Order issued to Theodore Ragsdale (Case No. KRH-0002) would be modified regarding the evidentiary hearing.
Jan. 25, 1988	Environmental Policy Institute, Washington, DC.	KFA-0159	Appeal of an information request denial. If granted: The Environmental Policy Institute would receive access to copies of correspondence between the Department of Energy and various institutions from September 1, 1982 to the present.
Jan. 27, 1988	Arizona Trails, Inc., Flagstaff, Arizona	KEE-0159	Exception to the reporting requirements. If granted: Arizona Trails, Inc. would no longer be required to file EIA Form 782-B "Reseller/Retailers' Monthly Petroleum Sales Report."
Do	Cheron, U.S.A., Inc., Washington, DC	KEF-0100	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to Part 205, Subpart V in connection with the Consent Order entered into with Chevron U.S.A., Inc. (Case No. RGFE006A1).
Jan. 29, 1988	Oregon, Salem, Oregon	KEG-0029	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Date received	Name of refund proceedng/name of refund applicant	Case No.
Mar. 11, 1986	Wolf Brothers Fuel, Inc	RF225-10946
Sept. 22, 1986	Wagner's Mobil	RF225-10947
Do	do	RF225-10948
July 21, 1986	Kiracofe Oil Company	RF225-10949
Do	do	RF225-10950
Jan. 25, 1988	Spruce Oil Corporation	RF83-163
Mar. 11, 1986	B.P. Newman Oil Company	RF225-10945
Jan. 25, 1988	Ralph L. Clarke, Inc	RF299-56
Do	Herr's Laundry	RF299-57
Do	Bahrs Die & Stamping Co., Inc	RF299-58
Jan. 28, 1988	Fine Paper & Film Group	RF299-59
Jan. 7, 1987	Schaffer OIL Company	RF225-10953
Aug. 1, 1986	Hebco Oil Company, Inc	RF225-10954
July 22, 1986	Deyound Eat, Inc	RF225-10955
Do	Friend & Friend Oil Co., Inc	RF225-10956
Aug. 1, 1986	McGullicuddy Oil Company	RF225-10957
Do	Harbor Supply Oil Co. Inc	RF225-10958

Date received	Name of refund proceedng/name of refund applicant	Case No.
Jan. 29, 1988	American Nuclear Corporation	RF272-4152
Jan. 25, 1988	Boncosky & Company, Inc	RF225-10939
Do	Dunmore Oil Company	RF225-10940
Do	R.L. Vallee, Inc	RF225-10941
Do	do	RF225-10942
Do	Westerfield Mobil	RF225-10943
Do	Blakesburg Oil Company	RF225-10944
Jan. 22, 1988	Richters Garage	RF265-2597
Dc	Monarch Service Station	RF299-55
Jan. 28, 1988	Carbonit Houston, Inc. & Richard W. Johnson	KRO-0620
Jan. 25, 1988	Standing Rock Sioux Tribe	RQ21-430
Jan. 22, 1988 thru Jan. 29, 1988.	Crude Oil Refund Applications Received	RF272-42831 thru RF272-43522
Do	Gulf Oil Refund Applications Received	RF300-4901 thru RF300-5098

[FR Doc. 88-9554 Filed 4-28-88; 8:45 am]
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Cases Filed; Week of January 29 through February 5, 1988

During the Week of January 29 through February 5, 1988, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Jan. 29 through Feb. 15, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 4, 1988	Texas, Austin, TX	KEG-0030	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Refund Applications Received

[Week of Jan. 29 through Feb. 5, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/29/88	Tilden Mining Co	RD272-7915
01/29/88	Empire Iron Mining Partnership	RD272-5179
02/01/88	Central Steel & Wire Co	RD272-6123
02/01/88	Telecyne Allvac	RF272-7415
02/01/88	LTV Steel Mining Co	RD272-8087
12/16/87	Cardinal Cushing General	RF272-17527
02/02/88	Darby Dan Farm	RF299-61
04/29/86	J.K. Pierce	RF225-10962
01/14/88	Peninsula Fuel Co	RF225-10963
10/20/86	Service Oil Co	RF225-10964
10/20/86	do	RF225-10965
04/29/86	Camburn Oil Co., Inc	RF225-10959
08/18/86	Bertsch Oil Co	RF225-10960
04/25/86	Usher Oil, Inc	RF225-10961
02/03/88	Charlie & Dale Pettyjohn	RF265-2598
02/03/88	do	RF265-2599
02/03/88	JP Oil Co	RF265-2600
02/03/88	do	RF265-2601
02/05/88	Benjamin Pina	RF276-297
09/01/87	Richard F. Chaca	RF225-10966
05/13/87	Eugene Rau	RF225-10967
05/13/87	do	RF225-10968
05/13/87	Triboro Coach Corp	RF225-10969
02/04/88	State Escrow Distribution	RF302-2
02/01/88	Carter Bell Manufacturing Co	RF299-60
02/05/88	Quality Grain, Inc	RF299-62
02/05/88	Donegal Springs Foundry, Inc	RF299-63

REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 29 through Feb. 5, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/05/88	McDonalds	RF299-64
02/04/88	Revere Copper and Brass, Inc	RF299-65
02/04/88	Polerized Schiabo Neu Co	RF299-66
02/04/88	Gordon Hester	RF299-67
02/01/88	Pennzoil/Louisiana	RQ10-431
02/03/88	Pennzoil/New York	RQ10-432
08/14/87	National Helium/New York	RQ3-433
01/29/88 through 02/05/88	Crude Oil Refund Applications Received	RF272-43523 through RF272-44246
01/29/88 through 02/05/88	Gulf Oil Refund Applications Received	RF300-5099 through RF300-5247

[FR Doc. 88-9555 Filed 4-28-88; 8:45 am]

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Cases Filed During Week of February 5 Through February 12, 1988

During the Week of February 5 through February 12, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 5 through Feb. 12, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 9, 1988	True/Little America Refining Co., Washington, DC.	RR195-1	Request for modification/rescission. *If Granted:* The Oct. 22, 1987 Decision and Order issued to Little America Refining Company (Case No. RF195-8) would be modified regarding the firm's application for refund in the True Companies refund proceeding.
Feb. 5, 1988	Dairymen, Inc., Washington, DC	RR272-7	Request for modification/rescission. *If Granted:* The January 6, 1988, Decision and Order issued to Dairymen, Inc. (Case No. RF272-160) would be modified regarding the firm's application under the crude oil refund proceeding.
Do	Mobil/K&D Gas Station, Inc., Bronx, NY	RR225-1	Request for modification/rescission. *If Granted:* The Nov. 10, 1987 Decision and Order issued to K&D Gas Station, Inc. (Case No. RF225-5157) would be modified regarding the firm's application for refund in the Mobil Refund proceeding.
Feb. 8, 1988	Amorient Petroleum Co., California, Washington, DC.	KEF-0101	Implementation of special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205. Subpart V, in connection with the Consent Order entered into with Amorient Petroleum Co., California.
Do	National Treasury Employees Union, Washington, DC.	KEF-0160	Appeal of an information, request denial. *If Granted:* The National Treasury Employees Union would receive a copy of information regarding vacancy announcement #87-EO-8735/8736/8741.
Feb. 11, 1988	Mobil/Friendly Service Oil Co., Fredericktown, MT.	RR225-6 RR225-7 RR225-8	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Friendly Service Oil Co. (Case Nos. RF225-10907, RF225-10908 and RF225-10917) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	Mobil/Kirkland Oil Co., Jacksonville, TX	RR225-3 RR225-4 RR225-5	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Kirkland Oil Co. (Case No. RF225-10936) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	Mobil/Larke, Inc., Spokane, WA	RR225-2	Request for modification/rescission. *If Granted:* The Jan. 22, 1988, determination issued to Larke, Inc. (Case No. RF 225-10935) would be modified, regarding the firm's application for refund in the Mobil Oil refund proceeding.
Do	U.S. West Information System, Englewood, CA	KFA-0161	Appeal of an information, request denial. *If Granted:* The Jan. 7, 1988, Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded and U.S. West Information Systems would receive access to a complete copy of the regulations and procedures for E.G.&G. Idaho, Inc., a contractor retained by the DOE's Idaho Opertions Office.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 5 through Feb. 12, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 12, 1988	Agway, Inc., Washington, DC	KEF-0102	Implementation for special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Mar. 30, 1987, Consent Order entered into with Agway, Inc. (Case No. RTYA00001).
Do	Indian Wells Oil Co., Washington, DC	KEF-0103	Implementation of special refund procedures. *If Granted:* The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the consent order entered into with the Indian Wells Oil Co.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 5 through Feb. 12, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/05/88 through 02/12/88	Crude Oil Refund Applications Received	RF272-44247 through RF272-44857
02/05/88 through 02/12/88	Gulf Oil Refund Applications Received	RF300-5248 through RF300-5386
07/21/86	Johnson Oil Company	RF225-10970
07/21/86	Johnson Oil Company	RF225-10971
02/08/88	Col Kan Propane Service	RF253-48
02/10/88	Park Avenue Mobile Park	RF299-68
02/10/88	Saul V. Collins, Inc	RF299-69
02/10/88	Johnson's	RF299-70
02/10/88	Floyd C. Geeding	RF299-71
02/10/88	Fred J. Hayes Co., Inc	RF299-72
02/11/88	McDonalds	RF299-74
02/12/88	Krueger-Maddux Greenhouses	RF299-75
08/18/86	Eagle Oil Company	RF225-10972
08/18/86	Eagle Oil Company	RF225-10973
08/18/86	Eagle Oil Company	RF225-10974
02/16/88	All-Weather Roofing Co	RF299-76
02/10/88	P.C. Rinker	RF300-4551
02/09/88	Rogers Oil Company, Inc	RF265-2602
02/09/88	Rogers Oil Company, Inc	RF265-2603
02/10/88	Hinge Hardware	RF299-73

[FR Doc. 88-9551 Filed 4-28-88; 8:45 am]

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Cases Filed During Week of February 12 Through February 19, 1988

During the Week of February 12 through February 19, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

April 22, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 12 through Feb. 19, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Apr. 29, 1987	Shell Oil Co., Houston, TX	KFX-0048	Supplemental order. *If Granted:* The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with a Mar. 26, 1987 Consent Order entered into with Shell Oil Co.
Feb. 12, 1988	Mobil/Kasch Oil Co., Washington, DC	RR225-12	Request for modification/rescission. *If Granted:* The Feb. 5, 1988 Decision and Order issued to Kasch Oil Co. (Case No. RF225-8367) would be modified, and the firm's Mobil Oil refund application would be granted.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 12 through Feb. 19, 1988]

Date	Name and Location of Applicant	Case No.	Type of Submission
Do	Committee to Bridge the Gap, Los Angeles, CA	KFA-0162	Appeal of an information, request denial. *If Granted:* The Feb. 1, 1988 Freedom of Information Request Denial issued by the DOE Office of Nuclear Energy would be rescinded and the Committee to Bridge the Gap would receive access to a complete copy of NUS Report 4083 (Revision 1) "Comparative Risk Analysis of Selected Missions Utilizing Space Nuclear Electric Power Systems."

REFUND APPLICATIONS RECEIVED

[Week of Feb. 12 to Feb. 19, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
6/8/87	Grimm's Tank Wagon Service	RF265-2605
2/17/88	The Kephart Hardware	RF277-89
2/19/88	Premier Roofing Company, Inc	RF299-77
2/12/88 thru 2/19/88	Crude Oil Refund, Applications Received	RF272-44858 thru RF272-45482
2/12/88 thru 2/19/88	Gulf Oil Refund, Applications Received	RF300-5387 thru RF300-5478

[FR Doc. 88-9552 Filed 4-28-88; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During Week of February 19 Through February 26, 1988

During the Week of February 19 through February 26, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 19 through Feb. 26, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 22, 1988	Terranova, Seeger & Galezioski, Buffalo, NY	KFA-0163	Appeal of an information, request denial. *If Granted:* The Feb. 8, 1988 Freedom of Information Request Denial issued by the DOE Idaho Operations Office would be rescinded and Terranova, Seeger & Galezioski would receive access to information regarding Seaway Landfill, Tonawanda, NY.
Feb. 23, 1988	Multinational Legal Services, Washington, DC	KFA-0164	Appeal of an information, request denial. *If Granted:* The Feb. 12, 1988 Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and the Multinational Legal Services would receive access to records regarding the Navy Department's use and disposal of trichloroethylene (TCE) during 1940-1946.
Do	Marathon/Savings Oil Co., Washington, DC	RR250-2 of RR250-3	Request for modification/rescission. *If Granted:* The Jan. 29, 1988 Decision and Order issued to Savings Oil Co. (Case Nos. RF250-2365 & RF250-2366) would be modified and the firm would receive additional refunds in the Marathon Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Feb. 19 to Feb. 26, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
6/30/87	Denison Oil Company	RF265-2608
2/19/88	Amco/Rosebud Sioux Tribe	RQ21-434
2/22/88	Irby Oil Company	RF265-2607
2/22/88	Irby Oil, Inc	RF265-2613
2/22/88	John W. Galbreath & Company	RF299-78
2/22/88	Wayne Oil Company	RF265-2606

REFUND APPLICATIONS RECEIVED—Continued

[Week of Feb. 19 to Feb. 26, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/23/88	Parsons Skelly	RF265-2609
2/23/88	Rash Oil Company	RF253-49
2/24/88	Harmon Smith	RF300-5551
2/24/88	Middletown	RF263-37
2/24/88	Middletown	RF225-10975
2/24/88	Middletown	RF225-10976
2/19/88 thru 2/26/88	Crude Oil Refund, Applications Received	RF272-45483 thru RF272-47520
2/19/88 thru 2/26/88	Gulf Oil Refund, Applications Received	RF300-5479 thru RF300-5572

[FR Doc. 88-9553 Filed 4-28-88; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 14 Through March 18, 1988

During the week of March 14 through March 18, 1988, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Belcher Oil Co. Inc., 3/18/88, KXE-0158

Belcher Oil Co., Inc. (Belcher) filed an Application for Exception from the requirement to complete and file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Belcher's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Commonwealth of the Northern Mariana Islands, 3/16/88, KEE-0151

The Commonwealth of the Northern Mariana Islands (CNMI) filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. In particular, the CNMI requested that it be excepted from the requirement that to be eligible for grants under the DOE's Institutional Conservation Program (ICP), a building must be heated or cooled by mechanical means. In considering the CNMI's Application, the DOE found that many CNMI school and hospital buildings, which together represent a majority of the State's ICP-related structures, were ineligible to receive ICP grants because they were cooled by the trade winds rather than by mechanical means. The DOE concluded that the exclusion of such a large proportion of the Commonwealth's ICP-related buildings from participation in the ICP program frustrated the goals of the National Energy Conservation Policy Act and therefore imposed a gross inequity upon the CNMI. Accordingly, the Application for Exception was granted.

Implementation of Special Refund Procedures

Shell Oil Company, 3/15/88, KFX-0048

The DOE issued a Decision and Order implementing procedures for the distribution of $163.3 million (plus accrued interest) in crude oil overcharge funds remitted to the DOE by Shell Oil Company pursuant to the terms of a March 26, 1987 consent order. In the Decision, the DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds remitted by Shell attributable to crude oil overcharges was divided equally between the state and federal governments. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. All applications must be filed by June 30, 1988.

Refund Applications

A.J. Cloninger, Jr. et al., 3/18/88, RF272-5005 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of petroleum products, and determined its claim either by consulting actual purchase records or by estimating its consumption based on annual usage or partial records. As end-users, each applicant was presumed injured by the DOE. The sum of the refunds granted in this Decision is $901. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Allen Farms Inc., et al., 3/16/88, RF272-3346 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 42 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $825. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Bender Brothers et al., 3/16/88, RF272-5269 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 40 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. All but one of the applicants used the products for various agricultural activities or in operating small businesses. The remaining applicant is a local school district. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the

acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sume of the refunds granted in this Decision is $1,176.

Bernard Bennett, et al., 3/17/88, RF272–5780 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 33 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $713.

Beta Production Company/Caribou Four Corners, Inc., Standard Oil Company (Indiana)/Caribou Four Corners, Inc., 3/15/88, RF132–2, RF21–12626

Caribou Four Corners, Inc., a crude oil refiner, filed an Application for Refund in OHA's Subpart V crude oil refund proceedings. The Caribou Application was based on purchases of crude oil from Beta Production Company and Standard Oil Company (Indiana) (Amoco). Since Caribou did not participate in the refiners escrow fund established in the Stripper Well Settlement Agreement, it was deemed eligible to file this type of refund application. In considering Caribou's application, the OHA found that the firm had sustained overcharges in connection with its Beta purchases. The OHA further found Caribou did not sustain any injury in connection with its purchases of Beta crude oil made after the inception of the DOE's crude oil entitlements program, since the program should have compensated the firm for any overcharges sustained. The OHA did find that the firm was injured as a result of its pre-entitlements program Beta purchases. The OHA pointed out that the fund remitted by Beta to the DOE was $128,000 and determined that Caribou should receive 46 percent of that fund, the proportion of Beta purchases made prior to the inception of the entitlements program. Accordingly, Caribou was granted a refund of $58,880 and $64,488 in interest. Caribou's Application for Refund based on purchases of Amoco crude oil was denied because the firm failed to submit evidence demonstrating overcharge or injury.

Chapman Farms, et al., 3/16/88, FR 272–5491 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on the acres it farmed utilizing the USDA's national average of 23.8 gallons/acre/year of petroleum. Each applicant was an end-user of the products and therefore is presumed to have been injured. The sum of the refunds granted in this determination is $548.

Chicago Transit Authority, 3/18/88, RF272–210

Chicago Transit Authority (CTA) filed an Application for Refund from the crude oil overcharge monies currently available for disbursement under 10 CFR Part 205, Subpart V. In its Application, CTA stated that it provided public transportation in the Chicago area and, in the capacity, was an end-user of 201,801,975 gallons of diesel fuel during the period of crude oil price controls. The DOE determined that as an end-user of petroleum products in a business unrelated to the petroleum industry, CTA was presumptively injured as a result of crude oil overcharges and need not submit additional proof to receive a refund. In addition, the DOE rejected objections raised in the proceeding that: (i) As a governmental authority, CTA was ineligible for a refund, and (ii) the end-user presumption did not apply since CTA passed through all overcharges. Accordingly, DOE approved a refund of $40,360, based upon the amount of CTA's purchases and the volumetric refund amount currently available, $.0002 per gallon.

Cranston Oil Service Company, Inc./Anthony Marino 3/16/88, RF276–298

The DOE issued an Order supplementing a previous Decision which granted refunds to 15 applicants from a fund established pursuant to a 1977 consent order between the Department of Energy and Cranston Oil Service Company, Inc./Galego Oil Company (Cranston). *Cranston Oil Service Co./Joseph L. Pilosa*, 17 DOE ¶ 85,101 (1988) (*Cranston*). In that Decision, we granted refunds to the claimants on the basis of an estimate of the minimum purchase volume of the average home in the Cranston area during the consent order period. Subsequently, we discovered that one of the applicants, Anthony Marino (Case No. RF276–98), had in fact provided sufficient documentation of his purchases. Therefore, Mr. Marino was granted a supplemental refund.

Earl De Moss, et al., 3/18/88, RF272–3920 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 31 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,339.

Edward Neff, et al., 3/18/88, RF272–2810 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 43 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $851.

Getty Oil Company/Richfield Truck Stop, et al., 3/18/88, RF265–503 et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that were indirectly purchased from Getty jobbers/distributors during the consent order period. In 20 claims of this proceeding, the applicants were eligible for a refund below the $5,000 threshold. In the remaining seven claims, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $75,640, representing $37,283 in principal and $38,357 in acrrued interest.

Husky Oil Company/Colorodo Petroleum Products, Co., 3/14/88, RF161–15

The DOE issued a Decision and Order concerning an Application for Refund filed by Colorado Petroleum Products Co. (CPPC) in the Husky Oil Company (Husky) special refund proceeding. CPPC filed a claim for $9,280 based upon 20,350,249 gallons of motor gasoline and diesel fuel purchased from Husky during the firm's consent order period. The firm claimed an additional refund of $8,552 based upon the loss of a "prompt payment" discount Husky discontinued during a portion of the consent order period. With respect to the firm's request for an above-volumetric refund, CPPC demonstrated that during the 15-month period in which the discount was discontinued, the firm continued making prompt payments to Husky. CPPC, however, failed to demonstrate that it did not increase its prices to compensate for the loss of the discount. Without this information, the DOE could not determine that CPPC was injured by the lost discount. With respect to a refund on a volumetric basis, the firm also failed to make an injury showing. The DOE did approve a refund for CPPC at the $5,000 small claims threshold level established in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985). Accordingly, the firm was granted a refund of $7,303, representing $5,000 in principal plus $2,303 in accrued interest.

Jack P. Stoner, et al., 3/16/88, RF272–2067 et al.

The DOE issued a Decision and Order granting six Applications for Refund from available crude oil overcharge funds. Each applicant used actual records, such as invoices, tax records, receipts, or fuel supplier records, to arrive at its total gallonage of refined petroleum products during the crude oil price control period. Because each claimant was an end-user, none was required to demonstrate injury. A total of $1,156 was approved in this Decision and Order.

Jimmy H. Fann, et al., 3/16/88, RF272–2610 et al.

The DOE issued a Decision and Order approving forty-nine Applications for Refund from crude oil overcharge funds. The forty-nine claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they purchased during the period August 19, 1973 through January 27, 1981. Because the claimants were end-users, they were not required to demonstrate injury. A total refund of $2,137 was approved in this Decision and Order.

L.E. Johnson, Jr., et al., 3/17/88, RF 272–5393 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 51 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim by estimating its consumption based on the acres it farmed utilizing the USDA's national average of 23.8 gallons/acre/year of petroluem. Each applicant was an end-user of the products and therefore is presumed to have been injured. In sum of the refunds granted in this determination is $1,212.

Linden Lumber Company, Inc., et al., 3/15/88, RF272–2970 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the petroleum products for various commercial activities and each determined its claim by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $1,314.

Lowell C. Mather, et al., 3/17/88, RF272–4856 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $2,213. All the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Marathon Petroleum Company/ Powerama Distributing Corp., 3/15/88, RF250–1595

The DOE issued a Decision and Order concerning the Application for Refund filed by Powerama Distributing Corp. (Powerama), an indirect purchaser and retailer of products covered by a consent order that the DOE entered into with Marathon Petroleum Company. All of Powerama's suppliers have been granted refunds under either the small claims presumption of injury or the medium range presumption of injury. Under these circumstances, the DOE determined that it would be most equitable to presume that Powerama, a small claims applicant, was overcharged by its full volumetric amount. Accordingly, Powerama was granted a refund of $4,726, representing $4,110 in principal and $616 in accrued interest.

Mobil Oil Corporation/Farmers Union Central Exchange, Inc., 3/18/88, RF225–5291, RF225–5292, RF225–5293, RF225–10690

The DOE issued a Decision and Order regarding an Application for Refund filed by Farmers Union Central Exchange, Inc. (Cenex) in the Mobil Oil Corporation special refund proceeding. Cenex, a large agricultural cooperative, applied for a refund based on purchases of motor gasoline and propane from Mobil and on purchases of propane from Mobil Canada. The cooperative further sought a refund based on purchases of Mobil middle distillates and motor gasoline by Pacific Supply Cooperative (Pacific). Cenex acquired Pacific in October 1977. In its application, Cenex elected the presumptions applicable to agricultural cooperatives for all of its and Pacific's purchases, except with regard to Cenex's purchases of propane from Mobil, for which cenex claimed it had experienced a specific and measurable injury of $.0405 per gallon. In analyzing Cenex's claim, the DOE determined that the cooperative was not eligible to receive a refund for its purchases from Mobil Canada, nor had it demonstrated that it suffered a disproportionate share of injury in its purchases of Mobil propane. The DOE did, however, grant Cenex a full volumetric refund based on its purchases of Mobil propane and motor gasoline sold to its member cooperatives. With regard to Cenex's refund claim based on Pacific's purchases from Mobil, the DOE determined that the right to a DOE refund was not one of the assets transferred to Cenex under the Purchase and Sale Agreement between Cenex and Pacific. However, since Pacific was dissolved as a corporation in 1982, and since approximately three-quarters of Pacific's member cooperatives are currently members of Cenex, the DOE granted Cenex a refund based on Pacific's purchases from Mobil with the provision that this portion of Cenex's refund be passed through to the 49 members of Cenex that were formerly members of Cenex. In granting this

portion of Cenex's claim, the DOE relied on information regarding Pacific's purchases from Mobil provided by Mobil rather than on Cenex's estimates of the volumes of Mobil products purchased by Pacific. The total refund granted to Cenex was $107,587, representing $86,673 in principal and $20,914 in interest.

Mobil Oil Corporation/Larko Inc. et al., 3/15/88, RR225–2 et al.

The DOE issued a Decision and Order regarding Motions for Reconsideration filed by Donald H. Grissom, Esq. on behalf of Larko Inc., Kirkland Oil Company, Friendly Service Oil Company, and Lakewood Oil Co., Inc. in the Mobil Oil Corporation special refund proceeding. The claims were originally dismissed because they lacked necessary information and because they were filed after the deadline with no cause shown. Given that Mr. Grissom finally supplied OHA with the necessary information and showed that the claims were refilings, we approved the Motions and granted the four applicants refunds according to the procedures set forth in *Mobil Oil Corporation* 13 DOE ¶ 85,339 (1985).

Mobil Oil Corporation/Meredith Oil & Ice Co., et al., 3/14/88, RF225–9659 et al.

The DOE issued a Decision granting 9 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $28,308 ($22,824 principal plus $5,484 interest).

Mobil Oil Corp./Robert A. Kappmeyer, 3/14/88, RF225–4581

The DOE issued a Decision and Order granting an Application for Refund filed by Robert A. Kappmeyer in connection with the Mobil special refund proceeding. According to the presumption set forth for retailers of motor gasoline supplied directly by Mobil, Mr. Kappmeyer's refund was based on the volume of his motor gasoline purchases times 30 percent of the volumetric refund amount. The refund approved in this Decision totalled $31 ($25 in principal and $6 in interest).

Navajo Refining Co./Caribou Four Corners, Inc., 3/14/88, RF203–4

In this Decision, OHA approved a refund application filed by Caribou Four Corners, Inc. in the Navajo Refining Company refund proceeding. Caribou purchased 124,660,860 gallons of refined products from Navajo during the consent order period. OHA found that Caribou paid above market prices for 65 percent of the gallons that it purchased from Navajo. OHA granted Caribou a refund of $15,801 which equals 65 percent of the gallons that Caribou purchased times the per gallon refund rate of $0.000195. Caribou also receives accrued interest of $9,009.

Old Hudson River Coal & Fuel Oil Corp., Dimaios Super Service, 3/14/88, RF272–81 and RF272–4482

The DOE issued a Decision and Order denying Applications for Refund from the agency's Subpart V crude oil proceedings filed by two marketers of petroleum products. The denial was based on the fact that the applicants had not submitted any information indicating that they were injured by crude oil overcharges.

Pacific Gas & Electric Company, 3/18/88, RF272–287

Pacific Gas & Electric Company (PG&E), an investor-owned utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of states filed an objection to PG&E's application, claiming that PG&E should not be eligible to receive a refund because the utility itself was not an injured end-user. The states also claimed that PG&E should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the states' arguments, finding that PG&E was not claiming a refund for itself but rather agreed to pass through to its customers the benefits of any refunds which it would receive. The DOE also found that the Settlement Agreement permitted utilities to receive a refund in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of PG&E's claim. Accordingly, the application was approved and PG&E was granted a refund of $1,445,708.

Pennzoil Co./Louisiana, 3/16/88, RQ10–431

The DOE issued a Decision and Order granting the application filed by the State of Louisiana in the Pennzoil Company second-stage refund proceeding. Louisiana requested permission to use a portion of its Pennzoil monies to fund a Statewide Vanpool Program. The DOE found that the program provided restitution to injured consumers of petroleum products. Accordingly, Louisiana's submission was granted and the state was given a refund of $521,850 (representing $296,506 in principal and $225,344 in interest).

Ralph A. Leathers, Jr., et al., 3/15/88, RF272–832 et al.

The DOE issued a Decision and Order granting 47 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973, through January 27, 1981, and used the products for various agricultural activities. Each applicant determined the volume of its fuel purchases either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The sum of the refunds granted in this Decision is $1,341.

Ramapo Central School District, 3/16/88, RF272–2250

The DOE issued a Decision and Order granting an Application for a crude oil overcharge refund filed by Ramapo Central School District (Ramapo). Ramapo used actual records to arrive at its total gallonage of middle distillates during the crude oil price control period. Ramapo estimated its gasoline and motor oil usage based on its usage during more recent years. Because the claimant was an end-user, it was not required to demonstrate injury. A total of $597 was approved in this Decision and Order.

Ray Dechant, et al., 3/17/88, RF272–8817 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,365. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Raymond F. Charles, et al., 3/16/88, RF272–5900 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973. through January 27,

1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $1,054. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Robison & Smith, Inc., 3/18/88, RF272–5544

The DOE issued a Decision and Order granting a refund to Robison & Smith, Inc., a laundry and dry cleaning business that filed an Application for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that naphtha-based dry cleaning solvent is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $392.

Sigmor Corporation/Paul Investments, Inc., 3/15/88, RF242–10

The DOE issued a Decision and Order regarding a refund application filed by Paul Investments, Inc. in the Sigmor Corporation refund proceeding. According to the procedures set forth in *Sigmor Corporation*, 14 DOE ¶ 85,079 (1986), the DOE determined that the applicant was ineligible to receive a refund because it did not submit a volume schedule with its application and because the OHA was unable to contact the applicant. Accordingly, the OHA dismissed Paul Investments, Inc.'s claim.

W.R. Grace & Co., 3/18/88, RF272–5876, RF272–7004

The DOE issued a Decision and Order denying two Applications for Refund filed by W.R. Grace & Company (Grace) in the Subpart V crude oil proceedings. The DOE's denial was based on the fact that Grace's affiliate, Grace Distribution Services, had been approved for a refund from the Surface Transporters Escrow, and had waived Grace's right to a refund im the crude oil refund proceedings. Accordingly, Grace was ineligible for Subpart V crude oil refunds.

Willie C. Benbow, et al., 3/15/88, RF272–5837 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 48 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds grants in this Decision is $1,062.

Dismissals

The following submissions were dismissed:

Name and Case No.

Dean Rominger, RF272–15672
E.M. Lane Oil Co., Inc., RF263–38
Franklin County Oil Co., RF225–10999, RF225–11000
Lunde Fuel & Oil Supply, RF225–11001, RF225–11002, RF225–11003
MacMillan Oil Co., HRO–0122
McIntosh County, RF272–24071
Mid-America Transportation Company, RF225–4176
Rowell & Watson et al., RF265–1287, RF265–2526, RF265–2527, RF265–2528, RF265–2529, RF265–2530, RF265–2531, RF265–2532, RF265–2533, RF265–2534, RF265–2535, RF265–2536, RF265–2537, RF265–2538, RF265–2539
Winston-Salem Transit Authority, RF272–176.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

[FR Doc. 88–9556 Filed 4–28–88; 8:45 am]

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Issuance of Decisions and Orders During Week of March 21 Through March 25, 1988

During the week of March 21 through March 25, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Multinational Legal Services, 3/22/88, KFA–0164

Multinational Legal Services, filed an Appeal from a denial by the Assistant Manager for Administration of the DOE's San Francisco Operations Office of a Request for Information which Multinational had submitted under the Freedom of Information Act. Multinational sought access to any documents which refer to practices of the United States government during the period 1940–1946 for the use or disposal of trichloroethylene. In considering the Appeal, the DOE found that five responsive documents were properly withheld in their entirety under Exemption 5 of the FOIA. The DOE found that those documents, although factual in nature, were actually an expression of the agency's deliberative process and compromise the integrity of that process if released. As for the remaining responsive documents, the DOE determined that they were improperly withheld pursuant to Exemption 5. According to the DOE, those documents were not protected by the deliberative process privilege merely because they were selected from a larger universe of documents and included as appendices to a deliberative document. Accordingly, the DOE ordered that those documents be released promptly.

Implementation of Special Refund Procedures

Clean Machine, Inc., 3/24/88, KEF–0097

The DOE issued a Decision and Order implementing procedures for the distribution of $22,355 received pursuant to a consent order entered into by Harrell A. Musco and the DOE on July 6, 1987. The DOE determined that the consent order funds should be distributed to customers that purchased motor gasoline from Clean Machine during the period August 8, 1979 through January 31, 1980. The specific information to be included in Applications for Refund is set forth in the Decision.

Martinoil Company, 3/25/88, HEF–0124

The DOE issued a Decision and Order implementing a plan to distribute $200,000 received pursuant to a consent order entered into by Martinoil Company and the DOE on August 8, 1983. The DOE determined that the consent order funds should be

distributed to customers that purchased covered products from Martinoil during the period August 20, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Supplemental Order

Elk Trading Company, 3/25/88, KRX–0049

Elk Trading Company (Elk) filed a Motion for Supplemental Order relating to the final Remedial Order that was issued to the firm by the Office of Hearings and Appeals (OHA) on February 29, 1988. *Elk Trading Company and Neal Davis*, 17 DOE ¶83,005 (1988). Elk's Motion stated that by apparent oversight, the OHA had failed to dismiss the alleged permissible average markup (PAM) violation along with the other alternative violations alleged in the PRO. Accordingly, the alternative PAM violation alleged in the PRO was dismissed without prejudice.

Refund Applications

Abbey Transportation, et al., 3/22/88, *RF272–2148, et al.*

The DOE issued a Decision and Order granting four Applications for Refund from available crude oil overcharge funds. Each applicant used actual records, such as invoices or fuel supplier records, to arrive at its total gallonage of refined petroleum products during the crude oil price control period. Because each claimant was an end-user, none was required to demonstrate injury. A total of $1,572 was approved in this Decision and Order.

Aminoil U.S.C., Inc./Enterprise Products Company, 3/25/88, *RF139–27*

The DOE issued a Decision and Order concerning an Application for Refund filed by Enterprise Products Company (Enterprise) in the Aminoil U.S.A., Inc. special refund proceeding. Enterprise claimed a refund based on the procedures outlined in *Aminoil U.S.A.*, Inc., 12 DOE ¶ 85,217 (1985) (*Aminoil*), governing the disbursement of settlement funds received from Aminoil pursuant to a 1981 Consent Order. Enterprise submitted cost banks and a market price comparison which led the DOE to conclude that the firm was injured by its purchases from Aminoil and should receive a refund based on these purchases. Accordingly, Enterprise was granted a refund of $799,671 ($461,147 in principal and $338,524 in interest).

Board of Education, USD #500, 3/23/88, *RF272–3229*

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. To determine its fuel purchase volume, the Applicant used a combination of actual and estimated purchase figures. The estimated figures were based on the Applicant's average fuel consumption. The Applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The refund granted in this Decision is $445.

Borst Oil Corp., et al., 3/21/88, *RF272–7970 et al.*

The DOE issued a Decision and Order denying an Applications for Refund from the agency's Subpart V crude oil proceedings filed by 10 marketers of petroleum products. The denial was based on the fact that the unsupported, general statements submitted by the applicants did not establish that they were injured by crude oil overcharges.

City of Okmulgee, Ok, et al., 3/22/88, *RF272–827, et al.*

The DOE issued a Decision and Order granting 6 an Applications for Refund based on each applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined the volume of its fuel purchases either by consulting actual purchase records or by estimating its eligible fuel consumption based on average use during a period for which actual records were available. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,302.

Conoco Inc./Grady Stone Aviation, Inc., 3/25/88, RF220–468

Grady Stone Aviation, Inc. (GSA) filed an Application for Refund in which it sought a portion of the consent order fund obtained from Conoco, Inc. In its Application, GSA stated that it purchased 3,869,000 gallons of aviation gasoline from the City of Fort Smith, Arkansas, which purchased the product directly from Conoco. After analyzing the Application, the OHA concluded that because no showing was made that the City of Fort Smith had absorbed any of the alleged overchargers, and GSA had submitted adequate documentation for its refund claim of under $5,000, the firm should recieve a refund of $357 ($255 in principal and $102 in interest).

Conoco Inc./Western Marketing, Inc., 3/21/88, RF220–251

The DOE Issued a Decision and Order granting an Application for Refund filed by Western Marketing, Inc. in the Conoco Inc. special refund proceeding. *Conoco Inc.* 13 DOE ¶85,316 (1985). Western Marketing, a reseller/retailer of refined petroleum products, claimed a refund based on its document purchases of Conoco motor gasoline. To demonstrate that it was injured by Conoco's alleged overcharges, the firm submitted cost banks and a three-part competitive disadvantage test. After examining its application and supporting documentation, the DOE concluded that Western Marketing should receive a refund totalling $12,594, representing $8,746 in principal and $3,848 in accrued interest.

Cranston Oil Service Company, Inc./ Frank V. Toti, Cranston Farms, Inc., 3/22/88, RF276–258, RF 276–266

The DOE issued a Decision and Order concerning two Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set form in *Cranston Oil Service Co.*, 14 DOE ¶85,499 (1986). The sum of the refunds approved in this Decision is $460, representing $395 in principal and $65 in interest.

Dane County Highway & Transportation Dept., 3/23/88, RF272–5545

The DOE issued a Decision and Order granting a refund to Dane County Highway & Transportation Department. The county had submitted an Application for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicant had provided sufficient evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that liquid asphalt when purchased in its unadulterated form from a refiner is an eligible product upon which a crude oil refund claim may be based. As an end-user of petroleum products, the applicant was presumed to have been injured as a result of the crude oil overcharges. The refund granted was $2,007.

Dugas & LeBlanc, Ltd. et al., 3/24/88, RF 272–4521 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each

applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each appliant was an end-user of the products it claimed and therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $283.

Dwight L. Jackson, et al., 3/22/88, RF272–8946, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $1,115. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

E.L. & J.B. Fisher, et al., 3/21/88, RF272–8900, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 37 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $887. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Ferrell Companies, Inc./Fred G. McKenzie Company, Superior Gas and Chemical, 3/21/88, RF273–4 and RF273–6

The DOE issued a Decision and Order granting two Applications for Refund filed in the *Ferrell Companies, Inc.*, 14 DOE ¶ 85,514 (1986). Both applicants were retailers of Ferrell propane that claimed refunds of less than $5,000. Therefore, both were presumed to have been injured under the retailer small claims presumption. Based upon the applicants' submissions, the DOE granted refunds totaling $1,340, representing $949 in principal and $391 in interest.

Getty Oil Company/Kilpatrick Skelly Station, et al., 3/22/88, RF265–1942, et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund filed by resellers, retailers and one end-user of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that was indirectly purchased from Getty jobbers/distributors during the consent order period. In all of these claims, the applicants were eligible for a refund below the $5,000 threshold. The sum of the refunds approved in this Decision is $67,821, representing $33,429 in principal and $34,392 in accrued interest.

Getty Oil Company/Shawley's LP-Gas Co., et al., 3/25/88, RF265–35, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases that was indirectly purchased from Getty jobbers/distributors during the consent order period. All of the applicants elected to limit their claims on the basis of the percentage presumptions of injury methodology and were eligible for a refund below the $50,000 threshold. The sum of the refunds approved in this Decision is $69,743, representing $34,376 in principal and $35,367 in accrued interest.

Growers Chemical Corp. et al., 3/25/88, RF272–5543 et al.

The DOE issued a Decision and Order granting refunds to 23 claimants that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found, as end-users of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was $8,523.

John A. Busch et al., 3/25/88, RF272–9600, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 55 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in the Decision was $1,504.

Leo C. Marker, et al., 3/21/88, RF272–9002, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in the Decision was $1,274. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Metropolitan Atlanta Rapid Transit Authority, et al., 3/22/88, RF272–178 et al.

Metropolitan Atlanta Rapid Transit Authority (MARTA) and four other metropolitan and regional transit authorities filed applicants for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to the transit authorities' applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The objectors also claimed that as governmental authorities the applicants are ineligible for refunds from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of the objectors' arguments. With respect to the latter, the DOE found that not all of the applicants were governmental entities, and even where they were, the Settlement Agreement does not prohibit a state from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the applications were approved and the transit authorities were granted refunds totalling $69,270.

Mobil Oil Corporation/Congress Gas & Oil Co., Inc. et al., 3/22/88, RF225–5587 et al.

The DOE issued a Decision and Order granting refund applications filed by 39 purchasers of Mobil refined petroleum products. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil Oil Corporation escrow fund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this

Decision was $116,359, representing $93,732 in principal plus $22,627 in accrued interest.

Mobil Oil Corp./Mednansky Oil Company, Jose A. Montes, Moheb Yousef, 3/24/88, RF225–2395, RF225–2433, RF225–2434, RF225–2846, and RF225–2849

The DOE issued a Decision and Order concerning three Applications for Refund filed by Mednansky Oil Company, Jose A. Montes and Moheb Yousef in connection with the Mobil special refund proceeding. Each of these applicants was a consignee agent for Mobil during the consent order period. According to *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), it is presumed that consignee agents did not experience any injury from Mobil's alleged overcharges; therefore, consignee agents are ineligible to receive refunds unless they rebut the consignee presumption. Each of the three applicants was specifically notified of this presumption and was given 30 days in which to rebut it. None of the three applicants attempted to rebut the presumption. Accordingly, each of the three refund applications was denied.

Mobil Oil Corporation/Winco, Inc., 3/22/88, RF225–9799, RF225–9800 and RF225–9801

A Decision granting the Application for Refund from the Mobil Oil Corporation escrow account filed by Winco, Inc., a reseller of Mobil refined petroleum products. The applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund totalling $1,417 ($1,142 in principal plus $275 in interest).

Oceana Terminal Corporation/Trump Village Section 3, Trump Village Section 4, 3/25/88, RF243–2 and RF243–5

The DOE issued a Decision and Order concerning two purchasers of No. 2 fuel oil from Oceana, both of which are housing cooperatives. The applicants claimed refunds based on the procedures outlined in *Oceana Terminal Corporation* 13 DOE ¶ 85,363 (1986) (*Oceana*), governing the disbursement of settlement funds received from Oceana pursuant to an August 22, 1979 Consent Order. The two cooperatives have submitted their purchase volumes from Oceana and have stated that they will pass the refunds through to its customers on a dollar-for-dollar basis and will notify the state regulatory commission. In *Oceana*, housing cooperatives were presumed to have been injured by the alleged overcharges. Accordingly, the two firms were granted volumetric refunds. The total amount of refunds approved in this Decision is $2,098 ($840 in principal and $1,258 in interest).

Pyrofax Gas Corporation/General Motors Corporation, Kephart Hardware Company, Inc., 3/25/88, RF277–79 and RF277–89

The DOE issued a Decision and Order concerning two purchasers of propane from Pyrofax: General Motors (GM), an end-user, ad Kephart Hardware Company, Inc. (Kephart), a reseller/retailers of propane. The applicants claimed refunds based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) (*Pyrofax*), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. GM provided its purchase volumes from Pyrofax and all end users are presumed to be injured by *Pyrofax*. Kephart received a $5,000 small claims presumption refund and is also presumed to have been injured. The total amount of refunds approved in this Decision is $375,635 ($203,255 in principal and $172,380 in interest).

Pyrofax Gas Corporation/Wise Fuel and Oil et al., 3/25/88, RF277–11 et all.

The DOE issued a Decision and Order concerning six purchasers of propane from Pyrofax: one ERA-identified public utility and five reseller/retailers of propane. The applicants claimed refunds based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987) (*Pyrofax*), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. Berkshire Gas Company, the ERA-identified purchaser has agreed to rely on the information in the audit file and has stated that it will pass its refund through to its customers on a dollar-for-dollar basis and will notify the state regulatory commission. H.B. Lauster and Sons, Felix Hardware, Inc., Gibbs Gas Service, Inc. and L.P.G. Supply Company, Inc., were able to demonstrate injury in accordance with *Pyrofax* and received full volumetric refunds. Wise received a $5,000 small claims presumption refund. The total amount of refunds approved in this Decision is $217,032 ($117,752 in principal and $99,280 in interest).

Robert Whittaker, et al., 3/25/88, RF272–9110, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 52 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $973. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Sigmor Corporation/Dalvest Energy Inc., 3/22/88, RF242–9

The DOE issued a Decision and Order regarding a refund application filed by Dalvest Energy Inc. in the Sigmor Corporation refund proceeding. Dalvest claimed purchases of 19,988,500 gallons of motor gasoline from Sigmor during the consent order period and provided the necessary information to substantiate its claim. Accordingly, under the procedure outlined in *Sigmor Corporation*, 14 DOE ¶85,079 (1986), the DOE granted Dalvest a refund equal to the volumetric refund amount. The total refund approved was $3,418 ($2,678 in principal plus $740 in interest).

Southern California Edison Company, 3/22/88, RF272–282

Southern California Edison Company (Edison), a public utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of states filed an objection to Edison's application, claiming that Edison should not be eligible to receive a refund because the utility itself was not an injured end-user. The states also claimed that Edison should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the states' arguments, finding that Edison was not claiming a refund for itself but rather agreed to pass through to its customers the benefits of any refund that it would receive. The DOE also found that the Settlement Agreement permitted utilities to receive a refund in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of Edison's claim. Accordingly, the application was approved and Edison was granted a refund of $2,746,739.

St. Mary's Hospital, et al., 3/23/88: RF272–2229, et al.

The DOE issued a Decision and Order granting four Applications for Refund from available crude oil overcharge

funds. Each applicant estimated all or a portion of its gallonage during the crude oil price control period based on its gallonage during a period for which actual records were available. Because each claimant was an end-user, none was required to demonstrate injury. A total of $782 was approved in this Decision and Order.

Standard Oil Co. (Indiana)/Utah, 3/21/88, RQ21–418 and RQ251–419

The DOE issued a Decision and Order regarding an Application for Refund in the Standard Oil Co. (Indiana) second-stage refund proceedings filed by the State of Utah. In its application, Utah proposed to spend $531,000 of its Amoco monies on eight distinct energy conservation programs, including four farm energy management programs, a traffic light synchronization program and a furnance replacement and conversion program. In reviewing Utah's proposed plan, the DOE found that each program proposed by the State was restitutionary in that it would either promote energy conservation or reduce energy costs to injured consumers of petroleum products, or both. Accordingly, Utah was granted $531,000 ($488,571 principal plus $42,429 interest) in *Amoco* monies for the programs.

Walter Lambert et al., 3/25/88, RF272–6011 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $968.

Dismissals

The following submissions were dismissed:

Name	Case No.
Goodyear Tire & Rubber Co	RF272-415 R272-17465 R272-21549 R272-26134 R272-32224
J.M. Huber Corp.—Clay Division	RF272-12119
Thiem Oil Corp	RF225-2875
Washington Public Power Supply System.	RF225-6756

Copies of the full text of these decision and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 22, 1988.

[FR Doc. 88–9558 Filed 4–28–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3372-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared April 11 Through 15, 1988

Availability of EPA comments prepared April 11, 1988 through April 15, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–AFS–J82011–MT, Rating LO, Deerlodge National Forest, Protection of Recreation Sites from Mountain Pine Beetle Attacks, Implementation, Homestake, Delmoe Lake, Elder Creek and Thompson Park Recreational Areas, Jefferson and Silver Bow Counties, MT. SUMMARY: EPA has not identified any potential environmental impacts requiring substantive changes to this proposal. EPA has provided comments on specific clarifying language and additional information which should be addressed in the final EIS.

ERP No. D–AFS–L65118–OR, Rating EC2, Winema National Forest, Land and Resource Management Plan, Implementation, Klamath County, OR. SUMMARY: EPA's main concern with this document is the water quality monitoring and feedback mechanism are not fully developed. EPA's rating is based on how well this document documented the forest plan implementation process. The process should include: A description of the data base for existing conditions; Best Management Practices and prescription development; Selection of BMPs for specific activities; Upgrading of BMPs or prescriptions to correct inaccurate predictions; on-site inspection an administration; Detailed environmental monitoring; And built-in feedback mechanisms.

ERP No. D–BOP–G81002–TX, Rating LO, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX. SUMMARY: EPA expresses no objections to the proposed alternative as described in this document.

ERP No. D–COE–J28017–WY, Rating EU3, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, 404 Permit, Savery Creek, Carbon County, WY. SUMMARY: EPA raised two major concerns with this document: it does not adequately address the direct and indirect impacts of the proposed project and its alternatives. Secondly, this document does not contain an adequate mitigation plan which meets NEPA requirements. EPA recommended this document be supplemented.

ERP No. D–FHW–G40122–LA, Rating LO, Old Metairie Railroad Project, Railroad and Traffic Flow Conflicts Alleviation, Orleans Parish and Jefferson Parish Line to the Airline Highway and Causeway Boulevard Intersection, Funding Jefferson County, LA. SUMMARY: EPA has no objections to the long siding removal with certain other of traffic flow conflicts and noise problems associated with the operation of the New Orleans Terminal Company railroad in the Old Metairie area.

ERP No. DS–IBR–J34007–CO, rating EC2, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Dolores and Montezuma Counties, CO. SUMMARY: EPA is concerned the level of wetland mitigation presented in this document is not adequate to fully mitigate project impacts.

Note. The above summary should have appeared in the 04–22–88 FR Notice.

ERP No. D–USA–L11009–ID, Rating LO, Orchard Training Area Facilities Development Project, Construction and Improvements, Implementation, Ada County, ID. SUMMARY: EPA has no substantive comments to offer based on the review of this document.

Final EISs

ERP No. F–FHW–E40704–TN, Nonconnah Parkway Construction, I–240 to TN–57, Funding, Section 10 and 404 Permit, Shelby County, TN. SUMMARY: EPA has concerns with projected loss of wetlands and noise impacts along the new highway corridor. Although wetland compensation is discussed, detailed plans were not presented. Noise abatement measures were seriously considered for only one of seven deserving locations.

ERP No. F–FHW–E40705–KY, US 127 Improvements, Anderson County Line to I–64, Funding, Franklin County, KY. SUMMARY: EPA has concerns with potential degradation of groundwater by highway (construction and operation) runoff to sinkholes and the lack of noise abatement measures for affected residents along the proposed highway.

ERP No. F–FRC–KO3018–00, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Projects Construction, Operation and Maintenance, Licenses and 404 Permit, California, Arizona, Wyoming, Nevada, Utah, TX, Colorado, and New Mexico. SUMMARY: EPA expressed support for an intrastate alternatives, rather than an interstate alternatives, because it would have less adverse environmental impact on water quality, protected beneficial uses, wetlands, riparian areas, and endangered species. EPA noted that a number of issues it had raised in the scoping and draft EIS comment periods were not addressed in this document. EPA also noted that it would provide comments on project features that cross rivers and streams under Section 404 of the Clean Water Act.

ERP No. F–IBR–J28012–ND, Dunn-Nokota Methanol Project, Water Supply Contract Approval, Section 10 and 404 Permits, Lake Sakakawea, Dunn County, ND. SUMMARY: EPA feels this document provides additional information which adequately responds to EPA's concerns on the draft EIS.

Dated: April 26, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–9569 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3372–2]

Environmental Impact Statements; Notice of Availability of Environmental Impact Statements Filed April 18, 1988 Through 22, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382–5075 or (202) 382–5074.

EIS No. 880118, Final, COE, MO, Coldwater Creek Flood Damage Reduction and Related Improvement Plan, Implementation, St. Louis County, MO, Due: May 31, 1988. Contact: James Zerega (314) 263–5600.

EIS No. 880119, Final, FAA, CT, Groton-New London Airport Runway 5 Medium Intensity Approach Lighting System Installation, Funding, City and Town of Groton, CT, Due: May 31, 1988. Contact: Mr. M. Ashraf (617) 273–7060.

EIS No. 880120, Draft, FHW, WA, I–5 Widening, Main Street Interchange to I–205, Funding and 404 Permit, Clark County, WA, Due: June 13, 1988. Contact: P.C. Gregson (206) 753–2120.

EIS No. 880121, DSuppl, COE, WA, Grays Harbor Navigation Improvement Project, Updated Description of Impacts, Implementation, Chehalis and Hoquiam Rivers, Grays Harbor County, WA, Due: June 13, 1988. Contact: Marcia A. Geidel (206) 764–3625.

EIS No. 880122, Final, COE, AK, Chignik Small Boat Harbor Facility Development, Implementation, Anchorage Bay, AK, Due: May 31, 1988. Contact: William Lloyd (907) 753–2640.

EIS No. 880123, Final, COE, NJ, Port of Jersey Channel Navigation Improvement Plan, Implementation, Port of New York and New Jersey, Bayonne and Jersey City, Hudson County, NJ, Due: May 31, 1988. Contact: Peter Doukas (212) 264–1275.

EIS No. 880124, Draft, OSM, WY, Dry Fork Surface Coal Mine, Mining Plan Approval, Campbell County, WY, Due: June 13, 1988. Contact: Floyd McMullen (303) 844–3104.

EIS No. 880125, Draft, NPS, NV, CA, Death Valley National Monument, General Management Plan, Implementation, Inyo and San Bernardino Cos., CA, and Nye and Esmeralda Cos, NV, Due: July 1, 1988. Contact: Ed Rothfuss (619) 786–2331.

EIS No. 880126, Final, COE, KY, Upper Cumberland River Basin Area Flood Damage Reduction Plan, Implementation, Harlan, Baxter, Loyall and Rio Vista Cities, Harlan County, KY, Due: May 31, 1988. Contact: Ray Hedrick (615) 736–7666.

EIS No. 880127, DSuppl, COE, CA, Santa Ana River Mainstem and Santiago Creek Multiple Purpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Cos., CA, Due: June 15, 1988. Contact: Mr. Dee Gonzales (213) 894–7053.

EIS No. 880128, Draft, EPA, REG, Comfort Cooling Towers, Chromium Emission Standards and Elimination of the use of Hexavalent Chromium, Due: May 31, 1988. Contact: Doug Bell (919) 541–5602.

This EIS should have appeared in the April 15, 1988 **Federal Register.** The 45 day NEPA Review Period is calculated from April 15, 1988.

Dated: April 26, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–9568 Filed 4–28–88; 8:45 am]

BILLING CODE 6560–50–M

[OW–FRL–3372–7]

Office of Municipal Pollution Control's Indian Workgroup; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under ongoing activities to implement Pub. L. 100–4, the Water Quality Act of 1987 (WQA), section 518(c), the Office of Municipal Polllution Control (OMPC), in cooperation with the Indian Health Service, is currently developing a process for administering funds reserved under section 518(c) for Federal grants to fund the planning and construction of sewage treatment works to serve Indian Tribes.

A workgroup that includes members of various Indian Tribes, EPA and Indian Health Service staff will convene a workgroup meeting at 8:30 a.m., May 12 and 13, 1988, at the Old Colony Inn Conference Center, 625 First Street, Alexandria, Virginia, 22314. The workgroup will discuss the proposed process for providing grants to construct wastewater treatment systems. EPA encourages interested parties to attend this working session; however, comments from the public will be accepted only at the end of each session.

Final logistics of this meeting are subject to change. Please contact Chris Powers, Planning and Analysis Division, Office of Municipal Pollution Control, Room 1117ET, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or call 202–382–3770 before attending the meeting.

Dated: April 21, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water (WH556).

[FR Doc. 88-9520 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51705; FRL-3372-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1123, 88-1124—June 26, 1988.

P 88-1125, 88-1126, 88-1127—June 28, 1988.

P 88-1129, 88-1130, 88-1131, 88-1132, 88-1133—June 29, 1988.

P 88-1135, 88-1136, 88-1137, 88-1138, 88-1139, 88-1140, 88-1141, 88-1142, 88-1143, 88-1144, 88-1145, 88-1146, 88-1147, 88-1148, 88-1149, 88-1150, 88-1151, 88-1152—July 3, 1988.

P 88-1153, 88-1154—July 4, 1988.

Written comments by:

P 88-1123, 88-1124—May 27, 1988.

P 88-1125, 88-1126, 88-1127—May 29, 1988.

P 88-1129, 88-1130, 88-1131, 88-1132, 88-1133—May 30, 1988.

P 88-1135, 88-1136, 88-1137, 88-1138, 88-1139, 88-1140, 88-1141, 88-1142, 88-1143, 88-1144, 88-1145, 88-1146, 88-1147, 88-1148, 88-1149, 88-1150, 88-1151, 88-1152—June 3, 1988.

P 88-1153, 88-1154—June 4, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51705)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1123

Manufacturer. Confidential.

Chemical. (G) Isocyanate-terminated polypropylene glycol, blocked.

Use/Production. (G) Open, non-dispersive. Prod. range: 3200-9100 kg/yr.

P 88-1124

Importer. Confidential.

Chemical. (G) Fiber-reactive orange dye.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1125

Importer. Shin-Estu Silicones of America, Inc.

Chemical. (G) Fiber-reactive red dye.

Use/Import. (S) Vehicle for prints. Import range: 600-1,000 kg/yr.

P 88-1126

Manufacturer. Hercules Corporation.

Chemical. (G) Epoxy resin.

Use/Production. (S) Manufacture of carbon/epoxy prepare. Prod. range: Confidential.

P 88-1127

Manufacturer. Polymer Industries Incorporated.

Chemical. (S) Adipic acid; polyethylene terphthalene; diethylene glycol; tetrabutyl titanate.

Use/Production. (S) Reactive polyol. Prod. range: 909,090.9-1,363,636.4 kg/yr.

P 88-1129

Importer. Hoechst Celanse Corporation.

Chemical. (S) Ethyl 1-(2,4-dichlorophenyl)-5-trichloromethyl-(1H)-1,2,4-triazole-3-carboxylate.

Use/Import. Safening agent in herbicides. Import range: Confidential.

P 88-1130

Importer. Confidential.

Chemical. (G) Urethane/acrylic resin.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88-1131

Importer. Ciba-Geigy Corp.

Chemical. (G) Bisphenol A diglycidyl ether resin, reaction products with an aliphatic amine and an accelerator.

Use/Import. (S) Hardener for coatings. Import range: Confidential.

P 88-1132

Importer. Confidential.

Chemical. (G) Chlorinated alkene.

Use/Import. (S) Chemical intermediate. Import range: Confidential.

P 88-1133

Manufacturer. Reichhold Chemicals.

Chemical. (G) Acrylic polymer.

Use/Production. (S) Can coatings. Prod. range: Confidential.

P 88-1135

Importer. Goldschmidt Chemical Corporation.

Chemical. (G) Substituted-alkylpolysiloxane.

Use/Import. (G) Open, non-despersive. Import range: 1000-50,000 kg/yr.

P 88-1136

Manufacturer. Confidential.

Chemical. (G) Alkene-substituted aromatic amine.

Use/Production. (S) Monomer. Prod. range: 1,500-5,000 kg/yr.

P 88-1137

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyurethane.

Use/Production. (G) Auto interior coating component. Prod. range: Confidential.

P 88-1138

Manufacturer. Confidential.

Chemical. (G) Chloride of ethoxylated alcohol.

Use/Production. (G) Confidential. Prod. range: Confidential.

P 88-1139

Manufacturer. Confidential.

Chemical. (G) Chloroformate of ethoxylated alcohol.

Use/Production. (G) Confidential. Prod. range: Confidential.

P 88-1140

Importer. Confidential.

Chemical. (G) Fiber-reactive purple dye.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1141

Manufacturer. Confidential.

Chemical. (G) Alkyl aluminum catalyst.

Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1142

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1143

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1144

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1145

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1146

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminum catalyst.
Use/Production. (G) Injective molding system catalyst. Prod. range: Confidential.

P 88–1147

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkenyl trialkyl ammonium salt.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–1148

Manufacturer. Macrochem Corporation.
Chemical. (G) Alkyl quaternary salt of an alkylaminoethyl acrylate.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 88–1149

Manufacturer. Confidential.
Chemical. (G) Carboxylated acrylate bisphenol A epoxy resin.
Use/Production. (S) Solder mask for pc boards. Prod. range: Confidential.

P 88–1150

Importer. Confidential.
Chemical. (G) Fiber-reactive orange dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1151

Importer. Confidential.
Chemical. (G) Fiber-reactive yellow dye.

P 88–1152

Importer. Confidential.
Chemical. (G) Fiber-reactive red dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1153

Manufacturer. Confidential.
Microorganism. (G) *Bacillus alcalophilus,* self-cloned, by rDNA techniques to contain multiple gene copies for a protease enzyme using plasmid vectors from *Staphylococcus aureus.*
Use/Production. (G) This microorganism will be used for the biosynthesis of an enzyme: Subtilisin protease. Production range: Confidential.
Test data. Environmental studies: The number of vegetative cells of the improved production strain declined from 10^6 to 10^2 cells per ml in soil and water samples over 27 days, similar to the parent strain. The improved production strain is asporgenic. Spore production by the improved production strain was below the detection limit of the test method used. Toxicity studies: Mice were dosed by various routes and observed for 21 days. Both the parent strain and the improved production strain showed no clinical or histological abnormalities.
Exposure. Workers in laboratory and production areas.
Environmental release/Disposal. Production and processing: Live cells used for biosynthesis are contained in sealed fermentation vessel system. At the end of the biosynthesis, the cells are inactivated using a validated procedure and separated from the enzyme product. Disposal of cell waste: Landfill and waste water treatment facilities on company property.

P 88–1154

Importer. Hoechst Celanese Corporation.
Chemical. (G) Cationic azo dyestuff.
Use/Import. (S) Dyestuff for acrylic Fibers. Import range: 10,000–20,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 3780 mg-kg species (rat). Eye irritation: Moderate species (rabbit). Skin irritation: slight species (rabbit).

Dated: April 25, 1988.

Steve Newburg-Rinn,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–9521 Filed 4–28–88; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Credit Lyonnais, Paris, France; Application To Engage in Bullion, Foreign Exchange and Futures Commission Merchant Activities

Credit Lyonnais, Paris, France ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to retain 100 percent of the voting shares of Alexanders Rouse (USA) Limited, New York, New York ("ARUSA"), and thereby engage indirectly in the activities of gold and silver bullion trading, providing foreign exchange advisory and transactional services, and acting as a futures commission merchant. Applicant states that ARUSA conducts these activities principally for its affiliate, Alexanders Rouse Limited, London, the United Kingdom ("ARUK"), and that ARUSA functions as the agent of ARUK in the United States.

In the bullion trading activities, according to Applicant, ARUSA acts as the United States agent for its affiliate ARUK in its physical gold and silver transactions. As an agent, ARUSA accepts orders from United States customers on behalf of ARUK. Positions generated by ARUK in making trades are covered by it with forward contracts with other bullion dealers, banks and other institutions or with futures contracts purchased on regulated exchanges. The covering transactions may be effected worldwide with transactions in the United States being effected through ARUSA.

Applicant states that the foreign exchange services provided by ARUSA conform with § 225.25(b)(17) of the Board's Regulation Y (12 CFR 225.25(b)(17)) in that ARUSA does not take positions for its own account (it acts solely for ARUK), it observes the standard of care described in § 225.25(b)(17)(ii) of the Board's Regulation Y (12 CFR 225.25(b)(17)(ii)) and it does not itself execute foreign exchange transactions.

Applicant also states that ARUSA's future commission merchant activities conform with § 225.25(b)(18) of the

Board's Regulation Y (12 CFR 225.25(b)(18)) in that it acts for nonaffiliated persons as well as its affiliate ARUK in executing and clearing futures contracts of the type described in this subdivision.

The Board has previously determined that buying and selling gold and silver bullion are activities closely related to banking. *Standard and Chartered Banking Group Ltd.*, 38 Federal Register 27552 (1973). The Board has also previously found foreign exchange services and futures commission merchant activities to be generally permissible for bank holding companies. 12 CFR 225.25(b) (17) and (18), respectively.

The application differs from the Board's regulations and prior orders in several respects. ARUSA trades in gold and silver bullion for United States customers on behalf of ARUK. Moreover, the Board has not previously approved the proposed combination of activities in the same subsidiary.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that ARUSA's bullion activities are closely related to banking under previous Board decisions or are permissible as servicing activities under § 225.22(a)(1) of the Board's Regulation Y (12 CFR 225.22(a)(1)). ARUSA's foreign exchange services and futures commission merchant activities are, in Applicant's view, closely related to banking because of the similarity of these activities to activities previously determined by the Board to be closely related to banking. 12 CFR 225.25(b) (17) and (18). Applicant contends that the requirement contained in § 225.25(b) (17) and (18) (12 CFR 225.25(b) (17) and (18)) for conducting its activities through a separately incorporated subsidiary does not require that the activity must be isolated in a corporation that engages in no other activity but rather only that the corporation in which those activities are conducted be separate from the bank holding company. Finally, Applicant believes that futures commission merchant activities may be conducted for affiliated persons because such activities would be otherwise permissible as servicing activities. 12 CFR 225.22(a)(1).

In determining whether Applicant's proposed activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can resonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant believes that providing its services will increase competition by permitting it to compete in United States markets and will not result in adverse effects in light of its similarity to the activities of foreign exchange services and futures commission merchant previously incorporated in Regulation Y as permissible nonbanking activities. 12 CFR 225.25(b) (17) and (18), respectively. Applicant further states that there are numerous participants in the futures commission merchant and foreign exchange services market. Finally, Applicant states that there is no risk of unsound banking practices because virtually all of ARUSA's transactions are entered into for the account of ARUK and not for the United States branches or agencies of Applicant.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 31, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9509 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1988.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.*, Louisville, Kentucky; to engage *de novo* through its subsidiary, Liberty Financial Services, Inc., Louisville, Kentucky, in

making, acquiring, or servicing loans and other extensions of credit for Company's account and for the account of others pursuant to § 225.25(b)(1); and operating an industrial loan company under Tennessee State Law pursuant to § 225.25(b)(2) of the Board's Regulation Y. These activities will be performed in the State of Tennessee.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9510 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

Montclair Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Montclair Bancorp, Inc.*, Montclair, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Montclair Savings Bank, Montclair, New Jersey.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corporation*, Wilkes-Barre, Pennsylvania; to acquire 100 percent of the voting shares of Peoples First National Bank and Trust Company, Hazleton, Pennsylvania.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *McCamey Financial Corporation*, McCamey, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of McCamey Bancshares, Inc., McCamey, Texas, and thereby indirectly acquire Security State Bank, McCamey, Texas.

Board of Governors of the Federal Reserve System, April 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9511 Filed 4-28-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 22, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Request for Certification as a Hospital Provider of Extended Care Services in the Medicare/Medicaid Programs—NEW—Medicare hospitals will use the form to initiate the process of requesting approval to provide swing bed services. Respondents: Individuals or households, State or local governments, Federal agencies or employees, Small businesses or organizations. Number of Respondents: 1,500; Frequency of Response: One-time; Estimated Annual Burden: 388 hours.

2. Home Health Agency Survey Report Form (Test)—NEW—This is a pilot test of a revised process and test forms for surveying Home Health Agencies for Medicare participation. Respondents: Individuals or households, State or local governments. Number of Respondents: 7; Frequency of Response: One-time; Estimated Annual Burden: 116 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. State Plan for Title IV-E of the Social Security Act—0980-0141—"Foster Care Adoption Assistance, State Plan" is required, by section 471 of the Social Security Act, from any State wishing to claim FFP under Title IV-E for Foster Care and Adoption Assistance. State may use a preprined format or may develop its own format provided it meets the requirements of the Act and includes all applicable statutory, regulatory/policy references and citations for each State plan requirement. Respondents: State or local governments, Federal agencies or employees.

Number of Respondents: 51; Frequency of Response: 1;

Estimated Annual Burden: 765 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. Employee Vital Status Letter—0920-0035—The Vital Status letter is sent to members of retrospective studies to determine if an employee who was exposed to a toxic substance in the workplace that is suspected of causing long term adverse health effects is deceased or alive. This letter is used as a last resort, after all other methods have been exhaused. Respondents: Individuals or households. Number of Respondents: 200; Frequency of Response: Occasionally; Estimated Annual Burden: 33 hours.

Office of Assistant Secretary for Health

1. Grant Application for Minority AIDS Education/Prevention Projects—NEW—Information requested from applicants is needed for the review process to select awardees. The affected public would be organizations within communities wishing to apply for one of these grants. Respondents: Non-profit institutions. Number of Respondents: 150; Frequency of Response: Occasionally; Estimated Annual Burden: 2,400 hours.

Food and Drug Administration

1. National Environmental Policy Act; Policies and Procedures—0910-0190—The National Environmental Policy Act requires each Federal Agency to consider the environmental effects of its actions. Firms wishing to market new products regulated by FDA must submit applications requesting approval.

Certain applications must contain environmental information for determining whether the proposed action will have a significant environmental impact. Respondents: N/A; Frequency of Response: Occasionally; Estimated Annual Burden: 1 hour.

Health Resources Services Administration

1. Application for National Health Service Corps and Indian Health Service Loan Repayment Programs—NEW—The information collection will be used by PHS to determine an applicant's eligibility for participation in the Loan Repayment Programs. Respondents. Individuals or households, Businesses or other for-profit. Number of Respondents: 2,480; Frequency of Response: 1; Estimated

Annual Burden: 4,080 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–1238
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Date: April 25, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–9525 Filed 4–28–88; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–88–1796; FR–2506]

Income Eligibility for Assisted Housing; Implementation of Percentage Limits on Lower Income Families

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed notice.

SUMMARY: Elsewhere in this issue of the **Federal Register**, a Proposed Rule has been published which would implement Section 103 of the Housing and Community Development Act of 1987. Section 103 deals with the limitations on the admission of Lower Income Families, other than Very Low-Income Families, to dwelling units which have become available under public housing annual contribution contracts and Section 8 housing assistance payments contracts since October 1, 1981. This Notice provides, by program, the different percentage limitations that HUD proposes to use in approving exceptions to permit the admission of Lower Income Families, other than Very Low-Income Families, to post-October 1, 1981 units.

DATE: Comments due May 31, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

For Section 8 Programs administered under 24 CFR Parts 880, 881, and 883–886:

James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–5654.

For Section 8 Programs administered under 24 CFR Part 882 (Existing Housing and Moderate Rehabilitation):

Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755–6887, at the above address.

For Public Housing Programs administered under 24 CFR Part 913:

Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, telephone (202) 426–0744, at the above address. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended the United States Housing Act of 1937 ("1937 Act") to establish national percentage limitations on the number of families participating in housing assistance programs whose annual incomes are between the very low and lower income limits to: (1) Not more than 10% of admissions to units that were available for occupancy before October 1, 1981 and are leased thereafter [raised to 25% by section 213 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181, approved November 30, 1983)] and (2) not more than 5% of admissions to units that first become available after October 1, 1981. Section 103 of the Housing and Community Development Act of 1987 ("1987 Act") (Pub. L. 100–242, approved February 5, 1988) has further amended the 1937 Act to require that HUD not totally prohibit admission of families in the lower income, but not very low income, category. The 1987 Act also requires HUD to establish national percentage limitations on admissions of families in that income category for separate housing programs so that, when aggregated, the percentages will be no more than 5 percent of admissions to dwelling units which become available for leasing under public housing annual contributions contracts and section 8 housing assistance payments contracts under the 1937 Act on or after the effective date of the 1981 Amendments (October 1, 1981).

This Notice is being proposed in conjunction with a Proposed Rule which is being published in today's **Federal Register** and which proposes to permit the establishment of apportionments by Federal Register Notice, and to provide the mechanism for redistribution of these apportionments from time to time by Federal Register Notice as HUD determines redistribution to be necessary.

The Proposed Rule does not change the requirement of the current regulation that no Lower Income Family that is not a Very Low-Income Family, be admitted to a unit which became available for occupancy on or after October 1, 1981, without authorization by HUD. The percentage limits proposed by this Notice are solely for the purpose of the administration of the statutory limitation by HUD and do not constitute a preauthorization of exception admissions to PHAs or owners, nor do they establish a limit applicable to any particular PHA or project. A Final Notice will be issued after consideration of the comments received on this Proposed Notice and the Proposed Rule, but not before the proposed rule is made final. (Future Notices will be issued first as Proposed Notices, with a 30-day comment period.)

This Notice proposes to establish the following national percentage limitations for HUD's use in approving exceptions:

Program	Percentage
Public Housing Program	6.0
Part 880 (Section 8 Housing Assistance Payments Program for New Construction)	
Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation)	6.0
Part 882 (Section 8 Housing Assistance Program—Existing Housing) (Certificates Only)	1.0
Part 882 (Section 8 Housing Assistance Program—Moderate Rehabilitation)	6.0
Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies)	6.0
Part 884 (Section 8 Housing Assistance Payment Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects)	6.0
Part 885 (Loans for Housing for the Elderly or Handicapped)	6.0
Part 886, Subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside))	6.0
Part 886, Subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects))	6.0

The small percentage allotted to Section 8 Existing Housing is expected to offset the larger percentages allotted to the other listed programs because of the number of admissions expected under each program. Also, the small percentage allocation for Section 8 Existing Housing would permit HUD to continue to target the program to the neediest families while allowing some flexibility for approving PHA requests for exceptions. The following cases are illustrative of those where HUD may decide to permit the issuance of a Section 8 Certificate to a lower income but not very low income family:

(1) A family that resides in a public housing unit which is being disposed of or demolished.

(2) A family that lives in a Section 8 new construction or substantial rehabilitation project where the owner exercises the right to "opt out" of the Section 8 program.

(3) A family with a disabled member and high medical expenses where the family can only locate a unit with the accessibility features it needs if it rents on the private market.

(4) A family that has been admitted to the Section 8 Existing program through PHA error and no fault of the family and where termination of assistance would cause undue hardship.

While reasons for granting exceptions in Section 8 Existing would be primarily to help the particular families involved, exceptions in the other assisted housing programs, like public housing and Section 8 New Construction, would help address project needs as well. The larger percentage allocations, six percent versus one percent, would allow HUD to grant exceptions where, experience shows, PHAs and owners need them most. For example, exceptions could be given to:

(1) Allow projects to achieve and maintain full occupancy.

(2) Attain occupancy by families with a broad range of incomes.

(3) Support homeownership programs.

(4) Allow Lower Income Families, that are not very low-income, to remain in buildings that are acquired for a HUD-assisted housing program.

Other Matters

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Dated: April 5, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-9549 Filed 4-28-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, May 24, 1988, at the Clarion Hotel, Denali Room, 4800 Spenard Road, Anchorage, Alaska.

The tentative agenda for the Council will include consideration of:

—The Alaska Land Use Council's 1987 annual report.

—Recommendations for the Council's 1988-1989 Work Program.

—Recommendations for the proposed Lake Clark National Park and Preserve Land Protection Plan.

—Recommendations for Cooperative Planning Zones-Annual Review.

—Council's work group report on the "Economic Effects of ANILCA Implementation".

—Briefing on the Denali National Park and Preserve Land Exchange proposal between the National Park Service and State of Alaska.

—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or other matters of general concern to the Council should contact either Cochairman's office before the close of business Tuesday, May 10, 1988.

The public is invited to attend.

For further information contact:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272-3422, (FTS) 271-5485.

Alaska Land Use Council, Office of the State, Cochairman Designee, P.O. Box AW, Juneau, Alaska 99811, (907) 465-3562,

or

2600 Denali Street, Suite 700, Anchorage, Alaska 99503, (907) 274-3528.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

April 25, 1988.

[FR Doc. 88-9531 Filed 4-28-88; 8:45 am]

BILLING CODE 4310-10-M

Fish and Wildlife Service

Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan for the Yukon Delta National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has issued a Record of Decision (Decision) on the Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plan (Plan) for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act); section 3(d) of The Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This Decision on the Plan will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E.

Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

Copies of the Decision will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the Decision may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The Service has selected Alternative B, with several changes, for implementation. As described in the Plan, Alternative B is the alternative preferred by the Service. The Service is not recommending any additions on the Refuge to the National Wilderness Preservation System.

Alternative B provides a high degree of resource protection and a good opportunity for achieving the purposes set forth in the Alaska Lands Act, including conservation of fish and wildlife populations and habitats.

Date: April 22, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88–9491 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Convention; Prohibition on Importation of Burundi Ivory

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Effective immediately, the United States bans the importation of ivory from Burundi that was not registered with the CITES Secretariat by December 1, 1986. All ivory importations from any country that allows this Burundi ivory, whether in a raw or worked form, to be imported into or pass through that country will be prohibited.

SUPPLEMENTARY INFORMATION: At the fifth meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1985, The Secretariat was given the authority to form an Ivory Control Unit and to establish the Ivory Quota Control Procedures which control legal trade in African elephant ivory between Parties (and certain non-Parties adhering to these Procedures) and which also allowed a one-time trade of ivory stockpiled in non-producer countries only if it was registered with the CITES Secretariat by December 1, 1986. The Second Republic of Burundi, a non-party and non-elephant producing country, registered 89,464 Kg of raw ivory (18,148 tusks) with the Secretariat by this deadline. Although ivory trade experts believed that much of this ivory was illegally obtained, the Secretariat decided that stockpiles such as those in Burundi needed to be brought under control of the Ivory Quota Control Procedures, so that the new quota system for ivory exports could operate efficiently and effectively. The entire stockpile was thus allowed into international trade, and most of it was later imported legally into Hong Kong. The United States has allowed the importation of ivory derived from the Burundi stocks from countries that are party to CITES.

An informal report from the CITES Secretariat and information from independent sources now confirm that an additional 100 ± metric tons of elephant ivory that have not been registered under the CITES system have been discovered in Burundi. According to the report, the government of Burundi has stated that 16,437 tusks (87,562.5 Kg) were imported prior to the import ban instituted by the government of the Third Republic on November 5, 1987, and are now being held by three private dealers. In addition, the Burundi Customs Service has seized 21,698 Kg of ivory that was imported after the ban, although their irregularity has not been established and the status of these stocks is still in question. Since no ivory-producing country has authorized the export of this ivory to Burundi, and it has not been registered under the CITES system, the United States believes this Burundi ivory was obtained illegally.

The United States is encouraged by the actions of Burundi in imposing an import ban on elephant ivory and in attempting to enforce this ban. Unfortunately, Burundi can take no legal action against the ivory imported into Burundi prior to the November 5 ban, a quantity of illegal ivory nearly equal to that which was registered under CITES prior to December 1, 1986. While Burundi does not want to be entrepot for illegal ivory, the government is reportedly powerless to prohibit export of these new stocks.

Therefore, the United States encourages all countries to join in prohibiting the importation of this illegal ivory. Furthermore, the United States will take extraordinary measures to determine the trading route of this ivory to prevent its importation into this country. We will invoke the emergency regulation provision of the U.S. Endangered Species Act (16 U.S.C. 1533 (b)(7)) to ban all ivory importations from any country that allows this Burundi ivory, whether in a raw or worked form, to be imported into or pass through that country.

DATE: This action is effective April 29, 1988. There is not expiration date.

FOR FURTHER INFORMATION CONTACT: Clark R. Bavin, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202–343–9242.

Dated: April 26, 1988.

Frank Dunkle,

Director.

[FR Doc. 88–9573 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Intent To Prepare an Environmental Impact Statement or Environmental Assessment; Fish Hatchery; Nisqually Indian Reservation, Pierce County, WA

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) for the construction of a salmon hatchery in Pierce County, Washington.

The proposed project is needed to rebuild anadromous fish runs in the Nisqually River Basin. Rebuilding of anadromous fish runs in the basin is essential to meet the demands of the treaty and non-treaty commercial and sport fisheries, while ensuring continuing viability of the resource.

This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (§ 1501.7), to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS or EA. Comments and participation in this scoping process are solicited. Interested persons are encouraged to attend a public meeting to identify and discuss major issues and alternatives.

DATES: A public meeting regarding this proposal and preparation of the EIS or EA will be held at the Main Conference Room, Northwest Indian Fisheries Commission on June 2, 1988, at 1:00 p.m. at the Nisqually Indian Tribal Center on June 2, 1988, at 7:00 p.m.

ADDRESSES: Northwest Indian Fisheries Commission, 6730 Martin Way East, Olympia, Washington 98506; Nisqually Tribal Center, 4820 She-Nah-Num Dr., SE., Olympia, Washington 98503, and U.S. Fish and Wildlife Service, Assistant Regional Director—Fisheries, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Written comments should

be addressed to Mr. David Troutt at the Nisqually Tribal Center and should be received by May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Forner at the Service's Regional Office regarding the construction of the proposed fish hatchery; and Mr. David Troutt of the Nisqually Tribal Center regarding the public meeting. Mr. Forner's telephone number is (503) 230–5972. If specific directions to the Nisqually Tribal Center are needed, Mr. Troutt should be contacted at the above address or 206–456–5221.

SUPPLEMENTARY INFORMATION: In response to a strong need for restoration of anadromous fish runs in the Nisqually River and Puget Sound, the U.S. Fish and Wildlife Service proposes to construct a salmon hatchery at a site six miles above the mouth of the Nisqually River at the confluence with Clear Creek. Annual production goals of the facility are to include 6.8 million fall chinook, 0.63 million coho, and 3.4 million chum salmon smolts. Adult survival for all three species is projected to be a total of about 200,000 fish. The proposed site (S22, T18N, R1E, Willamette Meridian) is located in Pierce County, Washington, on land controlled by the U.S. Army, Fort Lewis Military Reservation but within the boundaries of the Nisqually Indian Reservation.

Funding has been appropriated by Congress for "construction of the Nisqually Fish Hatchery at Clear Creek." The site will be secured under terms of a long term lease. The operation and maintenance of the facility will be under the responsibility of the Nisqually Indian Tribe.

The Clear Creek site has long been acclaimed by fisheries biologists and managers as a prime location for a salmon hatchery, because of its high water quality and availability, location relevant to a Tribal fishery, and potential for contribution to other treaty and non-treaty sport and commercial fisheries in the Puget Sound region. The feasibility of the site for a major fish hatchery was evaluated in a 1982 report entitled *Nisqually Fish Hatchery Feasibility Report*, prepared by the Nisqually Indian Tribe under contract to the Service.

The proposed hatchery facility will utilize water from the two spring fed streams. Facilities to be constructed consist of a gravity feed water supply system, a hatchery building, 10 concrete raceways, 5 large rearing ponds, a fishway, a pollution abatement pond, and a roadway to provide both access to the site and flood protection. Some fill will be required to create the necessary hydraulic head for the gravity flow water supply system. Approximately 15 acres of the 135 acre site will be cleared.

Alternates to the proposed project which have been identified to date include:

1. No action.
2. Alternative location in the Nisqually River Watershed.
3. Alternative design not utilizing gravity-feed system.
4. Construction of a smaller facility.
5. Alternative methods of replacing lost fish runs.
6. Utilizing already existing hatchery facilities.
7. Production of alternative fish species combinations.

The preferred alternative is the proposed project as outlined in this notice.

Potential impacts from the project include effects on water quality, effects on endangered or threatened species populations, alteration of wetlands, impact of hatchery salmon on native salmon stocks in the Nisqually River, possible impacts to archaeological or cultural resources, impacts from construction of the facility upon a floodplain, impacts to wildlife from clearing of the site, and economic impacts from increased fish production.

Issued in Portland, Oregon, April 22, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88–9492 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AA–230–08–6310–02]

Bureau Forms Submitted for Review

The proposal for the collection for information below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone 202–395–7340.

Title: Road Use Fees Paid Report.

Abstract: This form is used to provide information needed to terminate a timber sale contract containing road amortization and road maintenance requirements.

Bureau Form Number: 5400–2 (formerly 5450–8).

Frequency: One for each relevant timber sale contract.

Description of Respondents: Individual, partnership, and corporate timber sale purchasers.

Annual Responses: 100.

Annual Burden Hours: 25.

Bureau Clearance Officer: Rick Iovaine (202) 653–8853.

Date: April 20, 1988.

Dean E. Stepanek,

Assistant Director for Land and Renewable Resources.

[FR Doc. 88–9499 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–84–M

[ID–030–07–4212–13; I–23057]

Amended Notice of Realty Action; Exchange of Public Land; Bingham County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of realty action, exchange of public land in Bingham County, Idaho.

SUMMARY: The Notice of Realty Action published in the March 20, 1987 **Federal Register** (Vol. 52, No. 54, Pg. 8980) is amended as follows:

The parcel listed below will be deleted from the exchange:

T. 7 N., R. 44 E., Boise Meridian,
Sec. 11: NE¼SW¼ (40 Acres).

The following parcel will be added to the exchange:

T. 7 N., R. 44 E., Boise Meridian,
Sec. 15: NW¼NIW¼.

All other information listed in the original notice remains unchanged.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the amended environmental assessment, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. For a period of 45 days interested parties may submit comments to the District Manager at the address listed above.

Dated: April 13, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88–9498 Filed 4–28–88; 8:45 am]

BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension.
Bureau/Office: Bureau of Accounts
Title of Form: Quarterly Report of Freight Commodity Statistics Class I Railroads
OMB Form No.: 3120–0031
Agency Form No.: QCS
Frequency: Quarterly/Annually
Respondents: Class I Railroads
No. of Respondents: 18
Total Burden Hrs.: 19,530
Brief Description of the need & proposed use: Reports are used to assess industry growth, sudden traffic pattern changes of carriers and effect on its National Transportation System.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Service Life Study
OMB Form No.: 3120–0037
Agency Form No.: ACV–159
Frequency: Annually
Respondents: Class I Railroads
No. of Respondents: 18
Total Burden Hrs.: 720
Brief Description of the need & proposed use: Form is used to collect data for determining service life of property used in computation of depreciation rates.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9343 Filed 4–28–88; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A1. Parent corporation and address of principal office: Jeffrey & David Marcus, c/o Clock Fashions, 152 Madison Avenue, New York, NY 10016.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Name	State of Incorporation
(i) Dan-Ellen, Inc	New York
(ii) MIM Industries, Inc	Tennessee
(iii) Damy Industries, Inc	Tennessee
(iv) L G Transport Services, Inc	Tennessee
(v) Clock Fashions, Inc	New York

B1. Parent corporation and address of principal office: CIGNA Corporation, One Logan Square, Philadelphia, PA 19103

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Century Indemnity Company (Connecticut)
(ii) Century Reinsurance Company (Delaware)
(iii) CIGNA Asset Advisers, Inc. (Delaware)
(iv) CIGNA Associates, Inc. (Connecticut)
(v) CIGNA Fire Underwriters Insurance Company (Connecticut)
(vi) CIGNA Healthplan, Inc. (Delaware)
(vii) CIGNA Individual Financial Services Company (Delaware)
(viii) CIGNA Insurance Company (California)
(ix) CIGNA Investment Advisory Company, Inc. (Delaware)
(x) CIGNA Investment Group, Inc. (Delaware)
(xi) CIGNA Investments, Inc. (Delaware)
(xii) CIGNA Life Insurance Company (Connecticut)
(xiii) CIGNA Loss Control Services, Inc. (Delaware)
(xiv) CIGNA Property and Casualty Insurance Company (Connecticut)
(xv) CIGNA RE Corporation (Delaware)
(xvi) CIGNA Road & Travel Club, Inc. (Texas)
(xvii) CIGNA Securities, Inc. (Connecticut)
(xviii) CIGNA Worldwide, Incorporated (Delaware)
(xix) Connecticut General Corporation (Connecticut)
(xx) Connecticut General Fire and Casualty Insurance Company (Connecticut)
(xxi) Connecticut General Life Insurance Company (Connecticut)
(xxii) Connecticut General Pension Services, Inc. (Connecticut)
(xxiii) ESIS, Inc. (California)
(xxiv) INA Corporation (Pennsylvania)
(xxv) INA Life Insurance Company of New York (New York)
(xxvi) CIGNA Reinsurance Company (Delaware)
(xxvii) INA Special Risk Facilities, Inc. (Delaware)
(xxviii) INAPRO, Inc. (Delaware)
(xxix) Indemnity Insurance Company of North America (New York)
(xxx) Insurance Company of North America (Pennsylvania)
(xxxi) International Rehabilitation Associates, Inc. (Delaware)
(xxxii) James P. Toner Company, Inc. (Pennsylvania)
(xxxiii) Life Insurance Company of North America (Pennsylvania)
(xxxiv) Pacific Employers Insurance Company (California)
(xxxv) Recovery Services International, Inc. (Delaware)
(xxxvi) Trilog, Inc. (Pennsylvania)
(xxxvii) CIGNA Direct Marketing Company, Inc. (Delaware)
(xxxviii) Bankers Standard Insurance Company (Florida)
(xxxix) Atlantic Employers Insurance Company (New Jersey)
(xl) Marketdyne International, Inc. (Delaware)

Noreta R. McGee,

Secretary.

[FR Doc. 88–9514 Filed 4–28–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–39; Sub-No. 10X]

St. Louis Southwestern Railway Co. Exemption; Abandonment in Navarro, Hill, Limestone and McLennan Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 52.87-mile line of railroad between milepost 621.23 near Corcicana and milepost 674.10 near Waco, in Navarro, Hill, Limestone, and McLennan Counties, TX.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91

(1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 29, 1988 (unless stayed pending reconsideration). Petitions to stay and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by May 9, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by may 19, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 4, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423 or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9231 Filed 4–28–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

Date: April 25, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633–4312.

The following collections are from the Immigration and Naturalization Service of the Department of Justice.

New Collections

(1) Visa Waiver Pilot Program Information Form
(2) I–791
(3) At the time of each application for admission under the Visa Waiver Pilot Program
(4) Individuals or households. Needed by every alien applicant for admission applying to enter the United states as a temporary visitor under the provisions of the Visa Waiver Pilot Program as authorized by section 313 of the Immigration Reform and Control Act of 1986
(5) 500,000 respondents at .083 hours each
(6) 41,500 estimated public burden hours
(7) Not applicable under 3504(h)

(1) Agreement Between a Transportation Line (Operating Between a Foreign Territory and the United States) and the United States
(2) I–755
(3) Other—as needed
(4) Businesses or other for-profit. This agreement between a transportation company and the United States is needed to assure transportation under section 217 of the Immigration and Nationality Act, as added by section 313 of the Immigration Reform and Control Act of 1986
(5) 50 respondents at 1 hour each
(6) 50 estimated public burden hours
(7) Not applicable under 3504(h)

Extensions of the Expiration Dates of Currently Approved Collections Without any Change in the Substance or in the Method of Collection

(1) Application for Temporary Resident Status as a Special Agricultural Worker
(2) I–700
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for procedures to be used to adjust the status of Special Agricultural Workers to that of temporary residents and subsequently, to permanent resident status
(5) 300,000 respondents at .75 hours each
(6) 225,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Waiver of Exclusion
(2) I–690
(3) One time only
(4) Individuals or households. Pub. L. 99–603 contains specific language regarding grounds of exclusion. Because of these specifics, the existing waiver application cannot be used
(5) 100,000 respondents at .25 hours each
(6) 25,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Application for Temporary Replacement Card
(2) I–695
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for the procedures to be used for the application for replacement of a temporary residence card (Form I–688)
(5) 250,000 respondents at .166 hours each
(6) 41,500 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Notice of Appeal
(2) I–694
(3) One time only
(4) Individuals or households. Information on this form is used in considering appeals of denials of

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[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, I.C.C. 2d _____, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

temporary resident status by legalization applicants and special agricultural workers
(5) 20,000 respondents at .5 hours each
(6) 10,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Request That Applicant Appear for Interview
(2) N–430
(3) One time only
(4) Individuals or households. This information is needed in order to prepare the Certificate of Naturalization for an eligible petitioner for naturalization as prescribed in section 338 of the Immigration and Nationality Act
(5) 311,625 respondents at .083 hours each
(6) 25,864 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Change of Address Notice
(2) I–697
(3) On occasion
(4) Individuals or households. In compliance with Pub. L. 99–603, the Immigration and Naturalization Service uses this form to keep current the addresses of legalization applicants and special agricultural workers
(5) 50,000 respondents at .083 hours each
(6) 4,150 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Medical Examination of Aliens Seeking Adjustment of Status
(2) I–693
(3) One time only
(4) Individuals or households. Pub. L. 99–603 requires specific language regarding the medical examination required of applicants who apply for temporary and permanent residence status
(5) 1,500,000 respondents at .5 hours each
(6) 750,000 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Application for Status as a Temporary Resident
(2) I–687
(3) One time only
(4) Individuals or households. Pub. L. 99–603 provides for certain aliens to apply for temporary resident status in the United States. Section 902 of the Foreign Relations Authorization Act, 12/22/87, provides for adjustment of status to temporary residency for certain aliens from Poland, Uganda, Ethiopia and Afghanistan
(5) 300,000 respondents at 1 hour each
(6) 300,000 estimated burden hours
(7) Not applicable under 3504(h)

(1) Guarantee of Payment
(2) I–510
(3) Other—as needed
(4) Businesses or other for-profit. Section 253 of the Immigration and Nationality Act provides that the master or agent of a vessel or aircraft shall guarantee payment of expenses incurred by an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in section 255 of the Act
(5) 1,000 respondents at .083 hours each
(6) 83 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Departure Information Card
(2) I–438
(3) On occasion
(4) Individuals or households. Used by aliens granted voluntary departure in lieu of deportation to notify the Immigration and Naturalization Service of departure arrangements
(5) 15,000 respondents at .033 hours each
(6) 495 estimated annual burden hours
(7) Not applicable under 3504(h)

(1) Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status
(2) I–591
(3) On Occasion
(4) Individuals or households. Used by U.S. sponsor in behalf of a refugee as acceptable sponsorship agreement and guaranty of transportation in order to be approved for refugee status
(5) 70,000 respondents at .332 hours each
(6) 23,240 estimated annual burden hours
(7) Not applicable under 3505(h)

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–9476 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–10–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30918]

KNRECO, Inc., d/b/a Keokuk Junction Railway Acquisition and Operation Exemption; the Atchison, Topeka and Santa Fe Railway Co.

On January 9, 1987, a notice of exemption was published in this proceeding in the **Federal Register** (52 FR 871) with respect to the acquisition by KNRECO, Inc., d/b/a Keokuk Junction Railway (KJ) from the Atchison, Topeka and Santa Fe Railway Company (ATSF) and the operation of approximately 33 miles of railroad between La Harpe, IL, and Keokuk, IA. Subsequently, KJ and ATSF entered into a car haulage agreement under which ATSF agreed to transport KJ cars over the ATSF line between La Harpe and Farmdale, IL. In a decision served October 29, 1987, we denied a petition for revocation and at the same time concluded that the car haulage agreement constituted incidental trackage rights. A supplemental notice reflecting that conclusion was published in the **Federal Register** on October 30, 1987 (52 FR 41785).

On reconsideration, the Commission has by decision served April 28, 1988, reversed its finding that the car haulage agreement constitutes incidental trackage rights. Instead, it concluded that it is a business arrangement between the carriers, and that it does not require Commission approval. Accordingly, the supplemental notice published October 30, 1987, is vacated.

Decided: April 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9513 Filed 4–28–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 9X)]

Southern Railway Co.; Abandonment Exemption Between Karnak and Mound City, IL, and Between the Sahara Mine and Bluebird Ramp, IL

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 10.6-mile line of railroad between milepost 234.7 at Karnak, IL, and milepost 245.3 at Olmstead, IL; its 1.6-mile line between milepost 251.6 and milepost 253.2 at Mound City IL; its 2.4-mile line between milepost 8.3 at the Sahara Mine, IL and milepost 10.7 at Bluebird Ramp, IL; and its 5.1-mile line between milepost 0.0 and milepost 5.1 on the Delta Mine Lead Track, IL.[1]

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court,

[1] Concurrently with this filing, Southern Railway Company filed a petition for exemption to abandon an additional 52.6 miles of rail line between Harrisburg and Karnak, IL and between Harrisburg and the Sahara Mine, IL. We have re-docketed this petition as Docket No. AB–290 (Sub-No. 23X).

or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, General Attorney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

This Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by May 4, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 25, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–9512 Filed 4–28–88; 8:45 am]

BILLING CODE 7035–01–M

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines*, served March 8, 1988.

[3] *See Exemption of Rail Line Abandonments or Discontinuance Offers of Financial Assistance*—— I.C.C. 2d——, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application by Sigma Chemical Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 29, 1988, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxy amphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Pethidine (meperidine) (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Morphine-3-Glucuronide (9329)	II

A maximum of 25 grams of each of the above listed substances will be imported annually and will be utilized in researcher or analytical studies.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 31, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: April 25, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88–9541 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board Meeting

The Missing Children's Advisory Board will meet in Fort Myers, Florida on May 13–14, 1988. The meeting will take place at the Sonesta Harbour Hotel, 15610 McGregor Boulevard, Fort Myers, Florida, (813) 466–4000. The public is welcome to attend.

The Board will discuss the annual comprehensive plan and other issues related to missing and exploited children.

For further information, please contact Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531. (202) 724–7655.

Dated: April 26, 1988.

Approved.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–9639 Filed 4–28–88; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public. List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be direced to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration

Control of Hazardous Energy Sources (Lockout/Tagout) (NPRM)
On occasion
State of local governments; Businesses or other for profit; Small businesses or organizations
523,203 responses; 1 hour
This information is needed by employers to enable them to provide specific control measures and documented procedures for employee protection when working conditions expose employees to the hazards of unexpected energization, start-up, or the release of stored energy of machines, equipment, or processes.

Extension

Occupational Safety and Health Administration and Migrant Housing Inspection/Violations Report

OSHA 120,120A and 124
1218–0004
Quarterly
State or local governments
16 Responses; 480 Hours; 3 Forms
Requires each State having an approved plan to submit reports so that the Secretary may evaluate the manner in which each State is carrying out its responsibilities under the plan.

Extension

Mine Safety and Health Administration

Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
2,046 respondents; 8,675 hours
Requires underground coal mine operators to keep records of the results of examinations of self-rescue devices.

Signed at Washington, DC, this 26th day of April, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–9574 Filed 4–28–88; 8:45 am]

BILLING CODE 4510–26–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1,

Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I		
New York	NY88-6(Jan. 8, 1988)	P.727.
Do.	NY88-17(Jan. 8, 1988)	P.821.
Do.	NY88-18(Jan. 8, 1988)	Pp.830-835.
Volume II		
Illinois	IL88-12(Jan. 8, 1988)	P.165
Do.	IL88-13(Jan. 8, 1988)	P.176
Missouri	MO88-10(Jan. 8, 1988)	P.655
New Mexico.	NM88-1(Jan. 8, 1988)	Pp.703-710.
Volume III		
Arizona	AZ88-2(Jan. 8, 1988)	Pp.17-18.
California	CA88-2(Jan. 8, 1988)	Pp.44-47. Pp.50-53.
Do.	CA88-4(Jan. 8, 1988)	Pp.70-71,87.
Montana	MT88-3(Jan. 8, 1988)	Pp.208-220.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd day of April 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-9253 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-46-C]

S&J Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S&J Coal Company, HC 88, Box 77, Williamsburg, Kentucky 40769, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-12412) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977. A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will

be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 31, 1988. Copies of the petition are available for inspection at that address.

Date: April 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-9575 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR Parts 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Grantsville, MD; 1-18-88 to 1-17-89; 10 learners for normal labor turnover purposes. (Men's uniform shirts).

The following certificate was issued under the knitted wear industry regulations (29 CFR 522.1 to 522.9, as amended and 522.30 to 522.35, as amended).

Somerset Manufacturing Co., Inc., Somerset, PA; 3-12-88 to 3-11-89; 5 learners for normal labor turnover purposes. (Ladies lingerie and sportswear).

The learner certificates have been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment and that experienced workers for the learner occupations are not available.

The certificates may be annulled or withdrawn as indicated therein in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of these certificates may seek a review or reconsideration thereof on or before May 16, 1988.

Signed at Washington, DC, this 19th day of April 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-9576 Filed 4-28-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-317]

Baltimore Gas and Electric Co; Correction to Consideration of Issuance of Amendment to Facility Operating License.

53 FR 12618 published on April 15, 1988, contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" related to the Calvert Cliffs Nuclear Power Plant, Unit No. 1. The abbreviation "RTP" in lines 10 and 12 of column three on page 12618 should be corrected to read "core cycle lifetime." In addition, the value "1.6" in column three item 5, line 3, on page 12618 should be corrected to read "1.15".

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-9517 Filed 4-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consolidated Edison (the licensee) to withdraw its August 7, 1981 application, as superseded August 2, 1985, to amend the Indian Point Nuclear Generating Unit No. 2 Technical Specifications. The proposed amendment would have revised the Technical Specifications for IP-2 to incorporate the requirements for the Alternate Safe Shutdown System. The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on September 25, 1985 (50 FR 38913). By letter dated October 13, 1987, the licensee requested an amendment application to incorporate fire protection requirements in accordance with Generic Letter 86-10 which completely supersedes the previous two submittals. The Commission is considering this as a request to withdraw the applications pursuant to 10 CFR 2.107.

For futher details with respect to this action, see (1) the applications for amendment dated August 7, 1981 and August 2, 1985; (2) the licensee's letter dated October 13, 1987, requesting the separate amendment application. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Marylee Slosson,

Project Manager, Project Directorate I-1, Division of Reactor Projects, I/II.

Dated 21st day of April 1988, Rockville, Maryland.

[FR Doc. 88-9516 Filed 4-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply

Cooperative, Inc. (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 20, 1988, the amendment would change Technical Specification Table 4.3.1.1-1, "Reactor Protection System Instrumentation Surveillance Requirements," to delete the Daily Channel Check requirements of Note (g) for the Average Power Range Monitor Flow Biased Neutron Flux—High Scram Functional Unit.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have determined, and the Commission agrees, that the proposed change to the Technical Specifications:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change only removes a requirement determined to have no meaningful value from a safety point. With properly maintained reactor protection system (RPS) instrumentation and periodic m-ratio checks, the accuracy/conservatism of the APRM-FBNF trip is assured and the validity of the loss of feedwater heater transient analysis (which takes credit for the APRM-FBNF trip) is not adversely affected by the deletion of Note (g). Gross deviations from the established core-flow and drive-flow conditions (m-ratio) will continue to be indicated by performance of the surveillance required under Technical Specification 3/4.4.1.2.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or changes to plant design are involved.

(3) Does not involve a significant reduction in a margin of safety because the relationships (under Specification 3.2.2) used to establish the APRM Flow-Biased Neutron Flux—High Scram and Flow-Biased Neutron Flux-Upscale control rod block trip setpoints will remain unchanged. The APRM-indicated recirculation loop drive flows will continue to be appropriately checked to ensure that their established relationship to total core flow is preserved. All other operability and surveillance requirements associated with the affected instrumentation remain unchanged.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 31, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazard consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it si requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 27 day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–9652 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–9 and NPF–17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would change Technical Specification (TS) 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels (i.e., vacancies) for fuel rods in reconstitutible fuel assemblies to be reinserted in the reactor core during a refueling outage. Presently, TS 5.3.1 requires that each fuel assembly contain 264 fuel rods clad with Zircaloy-4, except that limited substitutions of fuel rods with filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in peripheral fuel assemblies if justified by cycle-specific reload analyses. The revised TS 5.3.1 would require that each fuel assembly nominally contain 264 fuel rods clad with Zircaloy-4, except that substitutions of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in fuel assemblies if justified by cycle-specific reload analyses using NRC-approved methodology. The proposed revision would also state that should more than 30 rods in the core, or 10 rods in any assembly, be replaced per refueling, a special report describing the number of rods replaced would be submitted to the Commission pursuant to Specification 6.9.2 within 30 days after cycle startup.

The increased flexibility associated with the proposed change results from removal of "limited substitutions" and "peripheral fuel assemblies." Under the proposed change, limitations on fuel rod substitutions or omissions and limitations regarding core locations are those implicit in the justifying analyses required to be performed by the licensee for each fuel cycle using NRC-approved methodology to demonstrate that existing design limits and safety analyses continued to be met. The proposed flexibility is intended to provide for improved fuel performance by permitting timely removal of individual fuel rods which are found during a refueling outage to be leaking. The requirement for special reporting is proposed in response to the NRC's request to be informed in the event a significant deviation from past fuel performances should be observed during a refueling outage.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 31, 1988, the licensee may file a reuest for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresed to David B. Matthews, Director, Project Directorate II–3; (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242. Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.7814(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 1, 1988, which modifies a letter of February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR Doc. 88–9518 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company (the licensees), for the operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

The proposed amendment would modify the Technical Specifications to change the maximum nominal enrichment of the fuel allowed to be used in the reactor core for operating Cycle 11 and beyond. Maine Yankee is currently in Cycle 10 operation.

Maine Yankee proposes to change, in Technical Specification 1.3, "Reactor", the fuel enrichment specification from a maximum nominal weight percent of 3.5 U–235 to 3.7 weight percent U–235.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 31, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Directorate I–3: petitioner's name and telephone number: date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. A. Ritscher, Ropes & Gray, 225 Franklin St., Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 24, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Wiscasset Library, High St., P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 25th day of April 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Project Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–9519 Filed 4–28–88; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Public Meeting

Notice is hereby given, pursuant to Pub. L. 92–463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Monday, May 16, 1988, at 10:00 a.m. to 5:00 p.m.; Tuesday, May 17, 1988, 9:00 a.m. to 4:00 p.m.; and Wednesday, May 18, 1988, at 10:00 a.m. to 4:00 p.m. at the Interstate Commerce Commission Building, Hearing Room B, 12th and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting is to examine several aspects of the AIDS epidemic and the impact on different population groups. There will be panel presentations on sexual behavior and AIDS in adults and teenagers, and discussions on food distribution systems and homeless people with AIDS or AIDS related conditions. Agenda items are subject to change as priorities dictate.

Records shall be kept of all Commission proceedings and shall be available for public inspection during regular office hours at 655—15th Street, NW., Suite 901, Washington, DC 20005.

Polly L. Gault,

Executive Director.

[FR Doc. 88–9501 Filed 4–28–88; 8:45 am]

BILLING CODE 4160–15–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25609; File No. SR–CBOE–88–08]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on April 19, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Rule 24.11(a) No Change

(b)(i) See SR–CBOE–88–06

(c)(ii) Option Contracts on an Industry Index. For each put or call option contract on an industry index carried in a short position in the account, margin must be deposited and maintained equal to at least 100% of the current market value of the contract plus [15] *20%* of the product of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each such option contract shall not be less than the option market value plus [5] *10%* of the current index value times the index multiplier.

(c)(1) No Change

(c)(2) See SR–CBOE–88–06

(d) No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change raises the margin requirements applicable to options on industry indexes. While the Exchange does not presently trade contracts on such indexes, the Exchange believes it advisable to modify its rule in order to be consistent with the proposed filings of other options exchanges.[1]

The new requirements would be in effect for a period not to exceed six months commencing on the date the margin increases become effective for positions established on or after the effective date. At the end of the six month period, the new percentages would revert to their previous levels unless other percentages proposed by the Exchange are deemed to be appropriate in light of the experienced market volatility. During this period, the Exchange, in conjunction with the other securities regulators, will have an opportunity to determine adequate procedures to routinely monitor and adjust margin levels so that they will provide adequate protection to the carrying broker-dealers based on current market volatilities.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b) thereof, in that the rule change is designed to adjust margins for industry index options to a level which provides a reasonable amount of financial protection to the securities industry and does not permit the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

[1] The CBOE previously filed a proposed rule change to increase the margin requirements applicable to broad market index and equity options. *See* File No. SR–CBOE–88–06. Notice of the proposal was provided in Securities Exchange Act Release No. 25552 (April 7, 1988), 53 FR 12486.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 20, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9540 Filed 4–28–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 45155; Order 88–4–68]

Application of Blue Bell, Inc., Wrangler Aviation, Inc. and W.A. Services, Inc.; Approval of a Transfer of Certificates

AGENCY: Department of Transportation.

ACTION: Order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue final orders finding Wrangler Aviation, Inc. fit, approving the transfer of certificates previously issued to Blue Bell under sections 401 and 418 of the Act, and reissuing the certificates to Wrangler.

DATES: Persons wishing to file objections should do so no later than May 2, 1988.

ADDRESSES: Objections and answers to objections should be filed in Docket 45155 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590 and should be served upon all parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: April 25, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–9539 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Environmental Impact Statement (EIS); Denver Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) announces to the public, and local, state, and Federal governmental agencies its intent to prepare an Environmental Impact Statement (EIS) and conduct EIS scoping meetings in conjunction with a proposal by the city and county of Denver to develop a new major airport in the Metropolitan Denver area. The proposal includes not only the development of specific airfield and access facilities described below but also, from the FAA's perspective, the development and implementation of air traffic control and airspace management actions related to an designed to effect the safe and efficient movement of air traffic arriving at and departing from the proposed new airport.

DATES: In order to ensure that all significant issues related to the

proposed development are identified and considered in the EIS process, a Federal EIS scoping meeting will be held to receive input from interested state, local and Federal governmental agencies regarding the subjects and issues which should be addressed in the EIS process. The meeting will be held at the following time and place: 12 pm to 5 pm, Monday, June 6, 1988, Denver Airport Hilton Hotel, 4411 Peoria St., Denver, CO (I–70 and Peoria St.)

Letters or other written material presenting economic, social, and environmental views, information, data, or concerns must be received by June 17, 1988 by the individual identified under the heading **"FOR FURTHER INFORMATION CONTACT."** In addition, questions may be directed to the individual identified under the heading **"FOR FURTHER INFORMATION CONTACT."**

ADDRESSES: The proposed development of a new major airport in the Metropolitan Denver area was the subject of an Environmental Assessment report (EA) dated April 22, 1988. Anyone wishing to review the EA in order to better understand the proposed actions or any specific aspect of them, or to be better able to provide comments regarding any particular environmental concerns may review the EA at any of the following locations during normal business hours.

Aurora North Public Library, 1298 Peoria Street, Aurora, CO
Federal Aviation Administration, Denver Airports Development Office, Stapleton Airport Terminal Building, Concourse E, Forth Floor, Stapleton International Airport, Denver, CO
Denver Public Library, (Montbello), 12955 Albrook Drive, Denver, CO
Denver Collection of Governmental Publications, Denver Public Library, 1357 Broadway, Denver, CO
Denver Public Library, (Park Hill), 4705 Montview Boulevard, Denver, CO
Adams County Public Library, 7185 Monaco Parkway, Commerce City, CO

FOR FURTHER INFORMATION CONTACT: Mr. George Brewer, Federal Aviation Administration, Terminal Building—Denver Stapleton Airport, Concourse E, Fourth Floor, Stapleton International Airport, Denver, Colorado 80207, Telephone: (303) 398–0864.

SUPPLEMENTARY INFORMATION: The proposed action is the development and operation of an entirely new major airport in the metropolitan Denver, Colorado area. The proposed new airport would be owned and operated by the city and county of Denver, which has indicated that this new airport, when completed and ready for operation would serve as a replacement for Stapleton International Airport. In conjunction with this proposed development it would be necessary for the FAA to develop and implement air traffic control and airspace management procedures designed to effect the safe and efficient movement and flow of air traffic to and from this new airport. The proposed development includes the following items of action:

(a) The acquisition of land necessary to construct and operate: (1) The airport complex itself, including the terminal and related groundside facilities and passenger facilities, an well as sufficient area on which to construct as many as twelve potential runways; (2) both on and off airport site areas appropriate and necessary to locate and operate air navigation facilities; (3) ground transportation facilities and related access roads designed to serve the new airport.

(b) The establishment of air traffic control and flight operating procedures designed in conjunction with the necessary on and off site air navigation facilities for use in the management of the navigable airspace and control of air traffic arriving at and departimg from the new airport.

(c) Construction of: (1) The airport complex, including the terminal and related aeronautical groundside facilities such as apron, hangars, passenger facilities, fuel storage and dispensing facilities, maintenance facilities, etc. . . . as well as the initial construction of six runways with future development growing to as many as twelve runways; (2) necessary and appropriate air navigation facilities located both on and off the airport including an air traffic control tower.

(d) Construction of roads, highways, or other ground transportation facilities designed to provide access to and serve the new airport, and the integration of these roads into the existing road system in the area.

(e) Within the limits of available appropriations and subject to other demands for funds Federal grant-in-aid funds would be provided for eligible airport development items under the airport and airway improvement program or its successor.

(f) Approval of an airport layout plan showing the above described development.

(g) The closure of existing Stapleton International Airport upon completion and commencement of operations at the proposed new airport including possible Federal waiver of reverter clauses attached to the existing Stapleton Airport site.

The following alternatives to the proposed action will be evaluated:

(a) The "no-build" alternative—under this alternative a new major airport would not be developed in the metropolitan Denver area and Stapleton International Airport would continue to be the major airport in the Denver area for the foreseeable future.

(b) Build the identified preferred airport configuration at the identified preferred location.

(c) Build the identified preferred airport configuration at an alternative location, one other than the identified preferred location.

(d) Build the airport with an alternative configuration at the identified preferred airport location.

Purpose of the EIS Scoping Meetings

All of the comments presented, whether written or oral, will be fully considered by the FAA in conjunction with the EIS process. The FAA will consider written or oral comments presented as the scoping process since it will provide an early and open process for determining the scope of the issues to be addressed in the EIS, and consequently will serve as a means of identifying the significant issues related to the proposed action. The FAA considers this process as an important means of identifying issues of significant concern to state, local, and other Federal governmental agencies so as to enable the FAA to focus attention on those identified significant issues related to the proposal.

Future Timetable

While it must be recognized that the timing of future events is not predictable with certainty since they are dependent on many different factors, the following information is presented in order to provide the public with a general understanding of that timetable:

—Approximate date on which a draft EIS may be issued is expected to be in September, 1988
—Approximate date on which a final EIS may be issued is expected to be in February, 1989.

Issued in Seattle, Washington, on April 19, 1988.

Edward G. Tatum, Manager,

Airports Division, Federal Aviation Administration, Northwest Mountain Region, Seattle, Washington.

[FR Doc. 88–9535 Filed 4–28–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE-88-15]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 19, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 21, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of Relief sought
25532	The French Connection Air Show	14 CFR 45.29	To allow petitioner's management to continue to display 2-inch-high registration marks on their two aircraft (N82BW and N986KB) after they are repainted.
25577	Lake Union Air Service, Inc	14 CFR 135.203(a)(1)	To allow pilots of petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief south, disposition
21168	PHH Executive Air Fleet, Inc.	14 CFR 135.297(a)	To extend Exemption No. 3203C that allows petitioner (formerly Executive Air Fleet Corporation) to use pilots in command who have completed an instrument proficiency check within the preceding 12 calendar months if they have satisfactorily completed in an approved aircraft simulator within the preceding 6 months either an instrument proficiency check or training to proficiency. Grant, April 13, 1988, Exemption No. 3203D.
24899	Aero Mod General, Inc.	14 CFR 21.19(b)(1)	To allow petitioner to remove the existing Continental IO 360 front and rear engines from the Cessna Model 337 Super Sky Master airplane and to replace them with a single front tractor-mounted Pratt and Whitney PT6A-27 turbine engine and obtain approval through the Supplemental Type Certificate procedure. Grant, April 13, 1988, Exemption No. 4924.
25400	Big Sky Transportation Company	14 CFR 135.181(a)(2)	To allow petitioner to operate its Swearingen SA226TC Metro II (SA226) airplanes under Instrument Flight Rules (IFR) or under Visual Flight Rules (VFR) over the top and to permit an alternate means of compliance with the performance requirements and the use of procedures for compliance with the en route limitations specified in § 135.181. Partial Grant, April 12, 1988, Exemption No. 4923.
25539	Northwest Airlines, Inc	14 CFR 121.0411(a)(1), (2), (3), and (6); 121.411(b); and 121.413(b), (c), and (d).	To allow petitioner to use certain qualified pilots from Aeroformation (a joint venture of Airbus Industrie and FlightSafety International) for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A-320 (A320) type airplane without those Aeroformation airmen holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. Grant, April 12, 1988, Exemption No. 4922.

[FR Doc. 88-9485 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

Aircraft Turnbuckle Assemblies and/or Turnbuckle Safetying Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO/C21b prescribes the minimum performance standards that aircraft turnbuckle assemblies and/or turnbuckle safetying devices must meet to be identified with the marking "TSO-C21b."

DATE: Comments must identify the TSO file number and be received on or before August 5, 1988.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C21b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written date, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO-C21b will revise the strength requirements of turnbuckle assemblies, permit the use of aluminum for turnbuckle bodies and provide for the use of locking clips safetying devices in lieu of safety wiring. Furthermore, the proposed TSO references Military Specification, MIL-T-8878C, "Turnbuckle, Positive Safetying," dated October 8, 1985, for the minimum performance standards.

TSO-C21a will remain in force and continue to permit the manufacture of turnbuckle assemblies which employ safety wiring.

How to Obtain Copies

A copy of the proposed TSO-C21b may be obtained by contacting the person under "**FOR FURTHER INFORMATION CONTACT.**" Military Specification, MIL-T-8878C, may be purchased from the Commanding General, Air Materiel Command, Wright-Patterson Air Force Base, Dayton, Ohio; or the Commanding Officer, U.S. Naval Air Station, Johnsville, Pennsylvania.

Issued in Washington, DC, on April 25, 1988.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 88-9478 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 14]

Final Passenger Motor Vehicle Theft Data for 1985

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of final theft data.

SUMMARY: The Motor Vehicle Information and Cost Savings Act provides that NHTSA shall publish passenger motor vehicle theft data for review and comment "immediately upon enactment of this title, *and periodically thereafter.*" (Emphasis added). The periodic publication of these theft data does not have any effect on the obligations of regulated parties under the Cost Savings Act. These theft data for years after 1984 serve only to inform the public of the extent of the motor vehicle theft problem. NHTSA previously published 1985 theft data for public review and comment. After evaluating those public comments, the agency has made some minor changes to the previously published 1985 data. This notice informs the public of those minor changes and of this agency's final calculations of 1985 theft data.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION: NHTSA has promulgated a Federal motor vehicle theft prevention standard at 49 CFR Part 541. This standard applies to cars that are in lines designated as "high theft lines." Whether or not a car line is a high theft line depends on the relationship of the line's actual or likely theft rate to the median theft rate for car lines in 1983 and 1984. Section 603(b)(3) of the Cost Savings Act (15 U.S.C. 2023(b)(3)) sets forth the steps NHTSA had to follow in making its determination of the median theft rate for 1983 and 1984. The agency followed those steps, published final theft data for 1983 and 1984 car lines, and made a determination of the median theft rate for those years. *See* 50 FR 46666; November 12, 1985.

Section 603(b)(3) of the Cost Savings Act also provides that NHTSA shall "periodically" publish later calendar years' theft data for public review and comment. These publications of theft data for subsequent model years have no effect on the determination of whether a car line is or should be subject to the requirements of the theft prevention standard. The agency believes that the reason Congress directed it to periodically publish theft data for later years was to inform the public, particularly law enforcement groups, automobile manufacturers, and the Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts of the Federal motor vehicle theft prevention standard.

To accomplish this purpose, NHTSA published for public review and comments the theft rates for 1985 on November 3, 1986 (51 FR 39877). NHTSA received four comments on the 1985 theft data, all of which were submitted by vehicle manufacturers.

BMW commented that its car lines should be shown as 3, 5, 6, and 7, instead of 3 Series, 5 Series, 6 Series, and 7 Series as shown in the previous notice. NHTSA agrees and has made this nomenclature change in this final listing.

Isuzu commented that the theft rate for its I-Mark line approximately doubled in 1985 when compared to that line's theft rate in 1983 and 1984. Isuzu analyzed the 1985 theft data and offered the following observations. During the 1985 model year, Isuzu produced both front-and rear-wheel drive versions of the I-Mark. Production of the rear-wheel drive version was discontinued in the middle of the 1985 model year. Most of the reported thefts of the I-Mark occurred in Puerto Rico, where the 1985 I-Mark theft rate was seven times higher than in the United States. Additionally, the theft rate of the rear-wheel drive I-Mark was as much as 25 times higher than the theft rate for the front-wheel drive I-Mark. Based on its analysis, Isuzu commented that it was unfair to rank a car whose theft rate was disproportionately high in only one area of the country, and very low throughout the rest of the country, as a high theft

line across the entire United States. Isuzu asked that the agency exclude thefts in Puerto Rico from calculations of the I-Mark's 1985 theft rate.

NHTSA is statutorily obligated to include vehicle thefts from Puerto Rico in making theft rate calculations. Section 603(b)(5) of the Cost Savings Act specifies: "* * * [T]he term 'new passenger motor vehicle thefts,' when used with respect to any calendar year, refers to those *thefts in the United States* in such year which are of passenger motor vehicles with the same model year designation as that of the calendar year." (Emphasis added). Section 2 of the Cost Savings Act (15 U.S.C. 1901) makes clear that, for the purposes of the Cost Savings Act, the United States consists of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. Therefore, thefts in the Commonwealth of Puerto Rico *must* be included in all calculations of theft rates.

Isuzu also questioned whether all of the I-Marks reported as stolen in Puerto Rico were actually stolen. As explained in previous notices listing theft data, the National Crime Information Center (NCIC), which is a division of the FBI, is the source for the NHTSA theft data. NCIC receives vehicle theft information from nearly 23,000 police agencies througout the United States. The agency has already determined that the NCIC vehicle theft data are the most accurate theft data; 50 FR 46666, at 46667; November 12, 1985. NHTSA has no reason to believe that the NCIC data includes vehicles that were not stolen, and Isuzu did not offer any reasons for its doubts about the accuracy of those data. Accordingly, no change has been made to the previously published theft data for the Isuzu I-Mark.

Toyota commented that the 1985 theft rates for its Camry, Corolla, and Tercel lines were calcualted based on erroneous production totals for those lines. Toyota provided NHTSA with a copy of the 1985 production totals for those three lines that it reported to the Environmental Protection Agency (EPA). Section 603(b)(1) of the Cost Savings Act specifies that NHTSA shall use the production totals as reported to EPA, when calculating theft rates. Therefore, Toyota's comment was persuasive, and this final list calculates the theft rates for those three lines based on the production totals reported to EPA.

Volkswagen essentially repeated the comments it made on the 1983 and 1984 theft data. That is, Volkswagen asserted that the purpose of title VI of the Cost Savings Act is to deal with "chop shop" operations and not with joyrider thefts. Volkswagen asserted that cars that are recovered were not stolen by "chop shops", and should not be counted as a vehicle theft under Title VI. Volkswagan concluded its comment by suggesting that NHTSA should calculate theft rates by subtracting vehicles that are recovered from total vehicle thefts, because this would more accurately reflect "chop shop" thefts.

The agency responded to a similar comments at length in the notice publishing final 1983 and 1984 theft data. *See* 50 FR 46668; November 12, 1985. To briefly repeat that response, agency contacts with police officials indicate that "theft-to-order" rings exist across the country. In these rings, professional thieves takes orders for specific parts of specific models of cars. The thieves then steal that model of car, remove the specified parts, and abandon the cars. These cars are generally recovered. Hence, NHTSA disagrees with Volkswagen's premise that cars that are recovered were not stolen for "chop shops."

Even if NHTSA agreed with Volkswagen's premise, the agency would not be allowed by Title VI to make its theft rate calculations in the manner suggested by Volkswagen. Section 603(b)(1) of the Cost Savings Act directs NHTSA to calculate theft rates by using "the number of new passenger motor vehicle thefts" for each car line. The use of this broadly inclusive language shows a Congressional intent to count *all* thefts to calculate theft rates, not simply those thefts that can be shown to have been made by or for "chop shops." Accordingly, the Volkswagen suggestion has not been adopted.

The following list represents NHTSA's calculation of theft rates for all 1985 car lines. As noted above, this list is only intended to inform the public of 1985 motor vehicle theft experience, and does not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50.

Issued on April 22, 1988.

Diane K. Steed,

Administrator.

BILLING CODE 4910-59-M

	MANUFACTURER	MAKE/MODEL (LINE)	THEFTS 1985	PRODUCTION (MFGR'S) 1985	THEFT RATE (THEFTS/PRODUCT) (1985) (1,000's)
1	GENERAL MOTORS	PONTIAC FIREBIRD	1,691	86,221	19.6124
2	GENERAL MOTORS	CHEVROLET CAMARO	2,691	167,309	16.0840
3	MAZDA	RX-7	864	58,848	14.6819
4	GENERAL MOTORS	CHEVROLET CORVETTE	543	37,730	14.3917
5	GENERAL MOTORS	BUICK RIVIERA	908	63,225	14.3614
6	GENERAL MOTORS	CHEVROLET MONTE CARLO	1,546	113,847	13.5796
7	GENERAL MOTORS	BUICK REGAL	1,599	120,772	13.2398
8	GENERAL MOTORS	PONTIAC GRAND PRIX	728	59,790	12.1759
9	GENERAL MOTORS	CADILLAC ELDORADO	865	75,215	11.5004
10	TOYOTA	SUPRA	285	27,442	10.3855
11	GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	2,412	234,470	10.2870
12	CHRYSLER CORP.	DODGE CONQUEST	25	2,502	9.9920
13	TOYOTA	CELICA	693	74,235	9.3352
14	GENERAL MOTORS	PONTIAC FIERO	609	69,391	8.7764
15	MITSUBISHI	STARION	50	6,067	8.2413
16	GENERAL MOTORS	OLDSMOBILE TORONADO	309	40,415	7.6457
17	FORD MOTOR CO.	LINCOLN TOWN CAR	864	115,763	7.4635
18	GENERAL MOTORS	CADILLAC SEVILLE	287	38,920	7.3741
19	CHRYSLER CORP.	PLYMOUTH CONQUEST	17	2,500	6.8000
20	TOYOTA	MR2	153	23,323	6.5600
21	VOLKSWAGEN	QUANTUM	89	13,787	6.4554
22	GENERAL MOTORS	CADILLAC FLEETWOOD BROUGHAM (RWD)	372	58,364	6.3738
23	NISSAN	300ZX	476	74,832	6.3609
24	FORD MOTOR CO.	FORD MUSTANG	909	143,627	6.3289
25	VOLKSWAGEN	CABRIOLET	72	12,555	5.7348
26	MAZDA	GLC	386	67,960	5.6798
27	FORD MOTOR CO.	FORD THUNDERBIRD	821	144,627	5.6767
28	PORSCHE	911	26	4,590	5.6645
29	GENERAL MOTORS	PONTIAC GRAND AM	427	75,962	5.6212
30	GENERAL MOTORS	CADILLAC DEVILLE/LIMO (FWD)	1,066	190,979	5.5818
31	PORSCHE	944	77	14,230	5.4111
32	AMC/RENAULT	ALLIANCE/ENCORE	707	134,664	5.2501
33	FORD MOTOR CO.	FORD EXP	138	26,351	5.2370
34	FORD MOTOR CO.	MERCURY COUGAR	584	111,667	5.2298
35	MERCEDES-BENZ	500SEL	45	8,695	5.1754
36	CHRYSLER CORP.	DODGE DIPLOMAT	133	25,751	5.1648
37	CHRYSLER CORP.	CHRYSLER FIFTH AVENUE/NEWPORT	572	110,999	5.1532
38	PININFARINA	SPIDER/AZZURA	3	600	5.0000
39	MITSUBISHI	TREDIA	61	12,320	4.9513
40	ISUZU	I-MARK	89	18,244	4.8783
41	GENERAL MOTORS	PONTIAC BONNEVILLE	259	53,395	4.8506
42	MAZDA	626	446	93,709	4.7594
43	FORD MOTOR CO.	MERCURY CAPRI	72	15,198	4.7375
44	NISSAN	SENTRA	821	173,873	4.7218
45	TOYOTA	CRESSIDA	203	43,129	4.7068
46	TOYOTA	CAMRY	538	115,113	4.6737
47	NISSAN	200 SX	156	33,460	4.6623
48	GENERAL MOTORS	PONTIAC 6000	725	156,326	4.6377

49	MITSUBISHI	CORDIA	50	11,131	4.4920
50	TOYOTA	COROLLA/COROLLA SPORT	820	183,666	4.4646
51	CHRYSLER CORP.	LASER	227	50,916	4.4583
52	BMW	6	16	3,681	4.3466
53	GENERAL MOTORS	BUICK LESABRE	640	147,679	4.3337
54	CHRYSLER CORP.	DODGE DAYTONA	205	47,437	4.3215
55	MITSUBISHI	MIRAGE	88	20,366	4.3209
56	MERCEDES-BENZ	380SL	48	11,111	4.3200
57	FORD MOTOR CO.	FORD LTD	784	184,863	4.2410
58	FORD MOTOR CO.	LINCOLN MARK VII	75	17,692	4.2392
59	GENERAL MOTORS	PONTIAC 1000	68	16,143	4.2124
60	CHRTSLER CORP.	DODGE LANCER	192	45,873	4.1855
61	GENERAL MOTORS	CHEVROLET SPRINT	116	27,781	4.1755
62	MERCEDES-BENZ	500SEC	7	1,687	4.1494
63	GENERAL MOTORS	OLDSMOBILE DELTA 88/CUSTOM CRUISER	924	227,481	4.0619
64	VOLKSWAGEN	SCIROCCO	56	13,812	4.0544
65	GENERAL MOTORS	BUICK SKYLARK	328	81,409	4.0290
66	CHRYSLER CORP.	CHRYSLER EXECUTIVE SEDAN/LIMOUSINE	3	757	3.9630
67	CHRYSLER CORP.	DODGE 600	232	58,893	3.9393
68	MITSUBISHI	GALANT	37	9,447	3.9166
69	GENERAL MOTORS	CHEVROLET CHEVETTE	400	105,427	3.7941
70	SUBARU	XT	19	5,019	3.7856
71	ALFA ROMEO	SPIDER VELOCE 2000	8	2,142	3.7348
72	FORD MOTOR CO.	MERCURY TOPAZ	289	77,431	3.7324
73	GENERAL MOTORS	BUICK ELECTRA	485	129,998	3.7308
74	AVANTI	AVANTI II	1	270	3.7037
75	GENERAL MOTORS	OLDSMOBILE 98 REGENCY	577	161,135	3.5808
76	VOLVO	740/760	176	49,272	3.5720
77	CHRYSLER CORP.	DODGE ARIES	422	118,525	3.5604
78	CHRYSLER CORP.	DODGE COLT/COLT VISTA	152	43,641	3.4830
79	GENERAL MOTORS	CHEVROLET IMPALA/CAPRICE	830	239,308	3.4683
80	GENERAL MOTORS	CADILLAC CIMARRON	68	19,770	3.4396
81	ISUZU	IMPULSE	47	13,695	3.4319
82	CHRYSLER CORP.	PLYMOUTH GRAN FURY	43	12,543	3.4282
83	NISSAN	PULSAR	135	40,252	3.3539
84	JAGUAR	XJ-S	14	4,187	3.3437
85	FORD MOTOR CO.	FORD TEMPO	961	291,667	3.2949
86	GENERAL MOTORS	PONTIAC 2000/SUNBIRD	316	96,080	3.2889
87	CHRYSLER CORP.	DODGE CHARGER	186	56,854	3.2715
88	GENERAL MOTORS	BUICK SOMERSET	259	79,492	3.2582
89	GENERAL MOTORS	PONTIAC PARIESINNE	225	69,526	3.2362
90	TOYOTA	TERCEL	330	104,070	3.1709
91	GENERAL MOTORS	BUICK CENTURY	745	237,862	3.1321
92	GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA/CRUISER (FWD)	943	303,943	3.1026
93	GENERAL MOTORS	OLDSMOBILE CALAIS	299	98,574	3.0333
94	CHRYSLER CORP.	CHRYSLER NEW YORKER	181	60,766	2.9786
95	CHRYSLER CORP.	DODGE OMNI	219	74,423	2.9426
96	CHRYSLER CORP.	PLYMOUTH RELIANT	402	137,762	2.9181
97	MERCEDES-BENZ	190	80	27,683	2.8899
98	LOTUS	ESPIRT	1	350	2.8571
99	CHRYSLER CORP.	CHRYSLER LEBARON/TOWN & COUNTRY	261	92,967	2.8074
100	CHRYSLER CORP.	LEBARON GTS	170	60,838	2.7943
101	CHRYSLER CORP.	PLYMOUTH CARAVELLE	111	40,010	2.7743
102	FORD MOTOR CO.	FORD ESCORT	1,128	407,315	2.7694
103	GENERAL MOTORS	CHEVROLET CAVALIER	989	360,353	2.7445
104	GENERAL MOTORS	BUICK SKYHAWK	199	73,821	2.6957

105	PEUGEOT	505	56	20,824	2.6892
106	GENERAL MOTORS	CHEVROLET SPECTRUM	122	46,341	2.6327
107	BMW	7	24	9,130	2.6287
108	CHRYSLER CORP.	PLYMOUTH HORIZON	228	88,338	2.5810
109	GENERAL MOTORS	CHEVROLET CITATION	135	53,258	2.5348
110	AUDI	5000S	127	50,558	2.5120
111	SAAB	900	100	39,858	2.5089
112	JAGUAR	XJ	43	17,277	2.4889
113	GENERAL MOTORS	CHEVROLET CELEBRITY	873	354,144	2.4651
114	FORD MOTOR CO.	MERCURY LYNX	209	84,805	2.4645
115	NISSAN	STANZA	118	48,006	2.4580
116	CHRYSLER CORP.	PLYMOUTH COLT/COLT VISTA	101	41,368	2.4415
117	FORD MOTOR CO.	LINCOLN CONTINENTAL	67	27,521	2.4345
118	GENERAL MOTORS	OLDSMOBILE FIRENZA	101	41,527	2.4322
119	HONDA	PRELUDE	189	78,432	2.4097
120	FORD MOTOR CO.	MERCURY MARQUIS	226	95,040	2.3779
121	MERCEDES-BENZ	300D/CD/TD	55	23,344	2.3561
122	CHRYSLER CORP	PLYMOUTH TURISMO	123	52,471	2.3442
123	BERTONE	X-1/9	3	1,310	2.2901
124	AMC/RENAULT	FUEGO	8	3,509	2.2799
125	MERCEDES-BENZ	300SD/380SE	44	19,734	2.2297
126	MASERATI	BITURBO	4	1,840	2.1739
127	FORD MOTOR CO.	MERCURY GRAND MARQUIS	323	151,102	2.1376
128	HONDA	ACCORD	539	260,055	2.0726
129	BMW	3	109	53,804	2.0259
130	VOLKSWAGEN	JETTA	149	73,665	2.0227
131	NISSAN	MAXIMA	176	88,097	1.9978
132	BMW	5	38	19,306	1.9683
133	AUDI	4000/COUPE	45	23,025	1.9544
134	HONDA	CIVIC	369	204,148	1.8075
135	PORSCHE	928	4	2,300	1.7391
136	ALFA ROMEO	GTV6	1	626	1.5974
137	SUBARU	SUBARU	161	101,220	1.5906
138	FERRARI	308	1	645	1.5504
139	FORD MOTOR CO.	FORD LTD CROWN VICTORIA	221	166,346	1.3286
140	VOLKSWAGEN	GOLF/GTI	146	112,070	1.3028
141	FORD MOTOR CO.	MERKUR XR4TI	16	12,404	1.2899
142	VOLVO	DL/GL	57	52,770	1.0802
143	AMC/RENAULT	181/SPORTWAGON	3	2,850	1.0526
144	GENERAL MOTORS	CHEVROLET NOVA	16	27,943	0.5726
145	FERRARI	TESTAROSSA	0	120	0.0000
146	ROLLS-ROYCE/BENTLEY	SILVER SPIRIT/SILVER SPUR/MULSANNE	0	906	0.0000
147	ASTON MARTIN	SALOON/VANTAGE/VOLANTE	0	29	0.0000
148	MASERATI	QUATTROPORTE	0	143	0.0000
149	AUDI	QUATTRO	0	69	0.0000
150	EXCALIBUR	PHAETON/ROADSTER	0	96	0.0000
151	FERRARI	MONDIAL	0	148	0.0000
152	ASTON MARTIN	LAGONDA	0	23	0.0000
153	ROLLS-ROYCE/BENTLEY	CORNICHE	0	226	0.0000
154	ROLLS-ROYCE/BENTLEY	CONTINENTAL	0	2	0.0000
155	ZIMMER	CLASSIC/ELEGANTE/CABRIOLET	0	170	0.0000
156	ROLLS-ROYCE/BENTLEY	CAMARGUE	0	16	0.0000
157	BITTER GMBH	BITTER SC	0	135	0.0000
158	TVR	2801	0	225	0.0000

[FR Doc. 88-9431 Filed 4-28-88; 8:45 am]

BILLING CODE 4910-59-C

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0367.
Form Number: ATF REC 5220/1.
Type of Review: Extension.
Title: Tobacco Export Warehouse—Record of Operations.
Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. The record is used to maintain accountability over these products. This allows ATF to verify that all products have been exported or tax liabilities satisified, and it protects tax revenues.
Respondents: Businesses or other for-profit.
Estimated Burden: 1 hour.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–9546 Filed 4–28–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0019.
Form Number: TFS 1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the TFS–1133 claim form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, signs and returns it to the Adjudication Division. Claims examiners review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Burden: 36,882 hours.
Clearance Officer: Hector Leyva (301) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 88–9547 Filed 4–28–88; 8:45 am]

BILLING CODE 4810–25–M

Office of the Secretary

[Dept. Circ.—Public Debt Series—No. 10–88]

Treasury Notes of April 30, 1990, Series Z–1990

Washington, April 21, 1988

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of April 30, 1990, Series Z–1990 (CUSIP No. 912827 WC 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price of Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 2, 1988, and will accrue interest from that date, payable on a semiannual basis on October 31, 1988, and each subsequent 6 months on April 30 and October 31 through the date that the principal becomes payable. They will mature April 30, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000 and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations govering United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reseve Banks and Branches and at the Bureau of the Public Debt,

Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday April 27, 1988. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 26, 1988, and received no later than Monday, May 2, 1988.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting damand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defind above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be proprated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section if final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, May 2, 1988. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 28, 1988. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, May 2, 1988. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive

payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-9635 Filed 4-27-88; 2:14 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 14887, Tuesday, April 26, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Tuesday, May 2, 1988.

CHANGES IN THE MEETING:

- The meeting will be held on Monday, May 2, 1988 at 2:00 p.m.
- The following item under the *Closed Session* has been cancelled: "Agency Adjudication and Determination on Federal Agency Discrimination Compliant Appeals"

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Dated: April 26, 1988.

Hilda D. Rodriguez,

Executive Officer, (Acting) Executive Secretariat.

This Notice Issued April 26, 1988.

[FR Doc. 88–9570 Filed 4–26–88; 4:42 pm]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for May 3, 1988.

DATE AND TIME: The meeting is scheduled to be held in the offices of the Farm Credit Administration in McLean, Virginia, on May 3, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. CEO Salary Proposals—
   - Central Bank for Cooperatives
   - Federal Farm Credit Banks Funding Corporation
2. Salary Changes for the Springfield District;
3. Implementation of the Agricultural Credit Act of 1987—
   - Final Rule on Disclosure to Shareholders, 12 CFR Part 620
   - Proposed Regulation on Mergers/Consolidations, 12 CFR Parts 611, 618 and 620
   - Proposed Regulation on Secondary Market, 12 CFR Parts 611, 612, 614, and 617–623
   - Proposed Regulation on Insurance to System Members and Borrowers, 12 CFR Part 618, Subpart B
   - Final Regulation on FCA Organization, 12 CFR Part 600
4. Delegation of Authority Concerning Disapproval of Association Consolidations and Other Proposed Restructurings;

[1]Closed Session

5. Examination and Enforcement Matters.

Dated: April 27, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–9647 Filed 4–27–88; 3:29 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, April 26, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

Discussion regarding a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Discussion regarding certain bank supervisory matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters should be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 26, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary, (Operations).

[FR Doc. 88–9620 Filed 4–27–88; 12:00 p.m.]

BILLING CODE 6714–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 25, 1988.

TIME AND DATE: 10:00 a.m., Thursday, April 28, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Southern Ohio Coal Company*, Docket No. WEVA 86–190–R, etc. (Issues include whether the judge properly vacated a section 104(d)(2) withdrawal order.)

It was determined by a unanimous vote of Commissioners that this item be included in the meeting and that no earlier announcement of the addition was possible. It was also determined that this portion be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629; (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

FR Doc. 88–9571 Filed 4–26–88; 4:41 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, May 4, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAffee,

Associate Secretary of the Board.

Date: April 27, 1988.

[FR Doc. 88–9631 Filed 4–27–88; 12:49 pm]

BILLING CODE 62-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday May 4, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendment to Regulation C (Home Mortgage Disclosure) to implement the Home Mortgage Disclousre Act amendments that permanently extend the Act and expand its coverage.

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: April 27, 1988.

James McAfee,

Associate Secretary of the Board.

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Friday, April 29,1988.

PLACE: Room 432, Federal Trade Commission Building 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of Notice of Proposed Rulemaking Initiating Amendment Proceeding for Funeral Rule.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,

Secretary.

[FR Doc. 88–9606 Filed 4–27–88; 11:07 am]

BILLING CODE 6750-01-M

Corrections

Federal Register
Vol. 53, No. 83
Friday, April 29, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-88-1]

Runaway and Homeless Youth Program; Availability of Financial Assistance

Correction

In notice document 88-4868 beginning on page 7142 in the issue of Friday, March 4, 1988, make the following correction:

On page 7167, the table was incorrect. The table entitled "Attachment 2-HDS Programs and Activities Covered by Executive Order 12372" should end after the entry "13.670". A new table entitled "Attachment 2-HDS Programs and Activities Not Covered by Executive Order 12372" should follow. The first entry should be "13.608".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-04-4212-13; M-75431]

Realty Action; Exchange in Montana

Correction

In notice document 88-7599 appearing on page 11565 in the issue of Thursday, April 7, 1988, make the following correction:

In the third column, under T. 10 N., R. 9 W., Section 4 should read "Section 4, Lots 3, 4, SW¼NW¼, S½S½, NE¼SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-018-08-4212-14; GP8-117]

Realty Action in Lake County, OR

Correction

In notice document 88-8298 appearing on page 12610 in the issue of Friday, April 15, 1988, make the following correction:

In the table, the legal description for serial no. OR 43343 should read "T. 28 S., R. 16 E., W.M., Oregon; Sec. 18: S½S½NE¼SW¼, S½N½S½NE¼SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

[AAG/A Order No. 13-88]

Privacy Act of 1974; System of Records

Correction

In notice document 88-6607 beginning on page 13003 in the issue of Wednesday, April 20, 1988, make the following correction:

On page 13003, in the third column, the 10th line should read "JUSTICE/OPA-002".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8175]

Income Tax; Taxable Years Beginning After December 31, 1953; Limitations on Passive Activity Losses and Credits

Correction

In rule document 88-3791 beginning on page 5686 in the issue of Thursday, February 25, 1988, make the following corrections:

1. On page 5692, in the third column, the third line from the bottom should read "2T(c)(2)(iii).".

§ 1.469-2T [Corrected]

2. On page 5722, in the second column, in § 1.469-2T(f)(4)(viii), *Example* (ii), in the second line from the bottom, "(f)(4)(ii)(*2*)" should read "(f)(4)(ii)(A)(*2*)".

3. On page 5723, in the first column, in § 1.469-2T(f)(4)(viii), *Example* (vii), in the third line, "form" should read "from".

§ 1.469-3T [Corrected]

4. On page 5724, in the third column, in § 1.469-3T(b)(1)(i)(B), in the first line, "described" was misspelled.

5. On page 5725, in the first column, in § 1.469-3T(d)(1)(ii), in the third line, after "taxpayer's" insert "taxable".

6. On the same page, in the same column, in § 1.469-3T(d)(2), in the second line, "regular" was misspelled.

§ 1.469-5T [Corrected]

7. On page 5728, in the first column, in § 1.469-5T(k), *Example* (7)(i), in the second line from the bottom, after "office" insert "receptionist in connection with the activity".

BILLING CODE 1505-01-D

federal register

Friday
April 29, 1988

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

The Control of Hazardous Energy Sources (Lockout/Tagout); Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-012A]

The Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to issue safety requirements for the control of hazardous energy sources, as a new § 1910.147. This proposal addresses the lockout/tagout practices and procedures that are commonly used to disable equipment and to control the release of potentially hazardous energy while maintenance and service activities are being performed. The standard would supplement and support the existing lockout and/or tagout related provisions by providing comprehensive and uniform procedures for use with those provisions. The proposal would be applied to general industry employment under 29 CFR Part 1910, but would not cover maritime, agriculture, or construction employment. It would also require training of employees in the use of these procedures and provide employers and employees with a set of mandatory rules and voluntary guidelines on which to base employer lockout and/or tagout procedural efforts. The proposal would not cover oil and gas well drilling; the generation, transmission and distribution of electric power by utilities; and work on electric conductors and equipment. These will be the subjects of separate rulemaking efforts.

The proposed standard would not establish definitive criteria for selecting a specific control measure (locks or tags) to secure an energy isolating device. The proposed standard would require that where no other standard specifies the use of a lock, a tag, or a combination of the two devices for a given situation, the employer must implement the proposed procedures and must select an appropriate and effective control measure based on the workplace hazards that are encountered. Future rulemakings will address as necessary the use of specific control measures (locks and/or tags) for particular operations, equipment and industry sectors.

OSHA expects that this proposal, if adopted, would prevent approximately 122 fatalities, 28,400 lost workday injuries and 31,900 non-lost workday injuries a year.

The proposed rule, § 1910.147, would be placed in Subpart J of Part 1910. Present § 1910.147 would be redesignated as § 1910.150 to allow for the new section.

DATES: Comments on the proposed standard must be postmarked by June 28, 1988. Requests for a hearing must be postmarked by June 28, 1988.

ADDRESS: Comments, information, and hearing requests should be sent to Docket Officer, Docket No. S–012A, Occupational Safety and Health Administration, Room N3670, U.S. Department of Labor, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, Washington, DC 20210, (202) 523–8148. This Notice of Proposed Rulemaking has been prepared by James L. Scully, Project Office, Officer of Mechanical Engineering Safety Standards. Staff assistance was provided in several areas by Richard Sauger.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA's initial General Industry standards, 29 CFR Part 1910, were originally published in the **Federal Register** (36 FR 10466, May 29, 1971) pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) and became effective on August 27, 1971. Before their adoption as OSHA standards, these occupational safety and health standards were either national consensus standards or established Federal standards. All of the current lockout/tagout provisions in Part 1910 which are affected by this proposal were adopted under the section 6(a) procedure.

At the time of adoption of the original OSHA standards, there was no general, all-encompassing consensus standard or Federal standard for locking out, tagging out, or disabling all types of machines or equipment to protect employees when maintenance or service activities were to be performed. However, OSHA did adopt various lockout-related provisions of consensus standards which had been developed for specific types of equipment. Lockout-related provisions in the General Industry standards (29 CFR Part 1910) which were adopted by OSHA are found in the following sections:

1910.178	Powered industrial trucks.
1910.179	Overhead and gantry cranes.
1910.181	Derricks.
1910.213	Woodworking Machinery.
1910.217	Mechanical Power Presses.
1910.218	Forging Machines.
1910.252	Welding, Cutting, and Brazing.
1910.261	Pulp, Paper and Paperboard Mills.
1910.262	Textiles.
1910.263	Bakery Equipment.
1910.265	Sawmills.

Note: See Ex. 13 for a more detailed list of lockout/tagout provisions in the above standards.

For further details involving the use of these provisions, refer to the discussion found in Section V, Summary and Explanation of the Standard, dealing with proposed paragraph (a)(3)(iii).

The present OSHA regulations for lockout and/or tagout, where they do exist, are not uniform in their coverage. Inconsistencies in these regulations exist between equipment and industries, and between different types of equipment in the same industry. Some provisions in the OSHA standards require equipment to have the *capability* of being "locked out," without *requiring* such control to be accomplished. OSHA feels that the lack of a general standard, and the incompleteness of the existing provisions, have contributed to the alarming number of injuries and fatalities that have occurred.

Since the inception of its enforcement program, OSHA, for the most part, has had to rely upon the use of the "General Duty Clause" (section 5(a)(1) of the Act) citation to ensure that employers provide safeguarding for their employees from the hazards involving the release of hazardous energy (lockout and/or tagout). This approach has met with only limited success based primarily upon the need for OSHA to prove, in the event of the contest of a section 5(a)(1) citation, that the hazard was a "recognized" hazard and that the hazard was causing or could cause death or serious physical harm. Because of these difficulties and the need to fill a significant gap in the current coverage of Part 1910, OSHA has been working since 1977 to gather sufficient information to enable the Agency to write a comprehensive lockout/tagout standard.

In 1977, OSHA published a notice in the **Federal Register** entitled "Machinery and Machine Guarding, Request for Information on Technical Issues and Notice of Public Meetings" (42 FR 1741, January 7, 1977) (Docket S–212). In this notice, OSHA addressed the issue of lockout, including the general question of whether lockout should always be required when machinery is not in its normal operating mode, or whether alternative methods for employee protection, such as tagout, should be

permitted (42 FR 1807). The purpose of that notice was to generate information for use in updating existing OSHA standards. Respondents to the notice generally recognized the hazards to employees when maintenance and repair activities are undertaken, and the need to use lockout or tagout devices for control purposes. There was, however, a considerable range of opinion regarding the effectiveness of either a lock, a tag, or a combination of these devices when they are used as safeguards.

The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) petitioned OSHA on May 17, 1979 (Docket S–012, [Ex. 2–3]), to establish an Emergency Temporary Standard (ETS) for locking out machinery and equipment. The petition indicated a need to recognize the complexities of modern industrial equipment using more than simply electricity as an energy source. It discussed the increasing need for locking out equipment to prevent that equipment from cycling without warning while it was being worked on, and related the importance of applying lockout procedures to systems using hydraulic or pneumatic power, to energy stored in springs and electrical capacitors, and to potential energy from suspended parts. Abstracts of case studies for fatalities involving 22 UAW members which were attributed to lockout-related causes since 1974 were submitted with the petition. OSHA also received other petitions and letters in support of those petitions from other labor organizations, including the AFL–CIO, Allied Industrial Workers, and the United Steelworkers of America.

OSHA responded to the UAW petition on September 11, 1979 [Ex. 2], declining to issue an ETS, but advising that OSHA was proceeding to draft an Advance Notice of Proposed Rulemaking (ANPR) dealing with the subject, in which the public would be invited to comment on the major issues involved in the development of a standard.

OSHA published the ANPR for a standard on lockout/tagout in the **Federal Register** on June 17, 1980 (45 FR 41012) (Docket S–012). In that notice, OSHA raised issues about whether or not a generic standard should be proposed; what should be the scope and application of a lockout standard; what constitutes the necessary and sufficient energy isolation methods and means; and whether there is a need for written procedures and documented employee training. The comments received in response to that Notice were utilized in the development of the present proposal. There did not seem to be overwhelming support in the comments for a generic standard approach to all facets of the lockout/tagout problem. The comments did, however, indicate that a performance-oriented standard, offering enough flexibility to take current work practices into consideration, was desirable and that a requirement for documented procedures, including employee training, would have many advantages. The comments pertaining to securing energy isolating devices (the use of locks, tags, etc.) did not generate an overwhelming response strongly favoring any particular method.

There have been several other inputs into the development of this Proposed Rule: First, the National Institute for Occupational Safety and Health (NIOSH) has provided considerable data to OSHA on this subject. NIOSH published a notice in the **Federal Register** entitled "Lockout and Interlock Systems and Devices: Request for Information" (45 FR 7006, January 31, 1980) (Docket S–012, [Ex. 2–1]) and has provided OSHA with the responses to that notice. As part of that project, NIOSH also published its "Guidelines for Controlling Hazardous Energy During Maintenance and Servicing" [Ex. 4]. Other sources have been a Bureau of Labor Statistics (BLS) survey entitled, "Injuries Related to Servicing Equipment" [Ex. 3] and two OSHA-directed studies—"Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 5], and "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 6]. Two further studies conducted by OSHA involved the compilation and analysis of OSHA Form 36 Preliminary Fatality/Catastrophe Event Reports [Ex. 7] and OSHA (5)(a)(1) citations [Ex. 8].

Of great assistance to OSHA in this undertaking was the fact that on March 8, 1982, the American National Standards Institute (ANSI) published a national consensus standard for lockout, ANSI Z244.1–1982, "American National Standard for Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements" [Ex. 9]. This standard lists the uniform performance requirements for developing and implementing a lockout and/or tagout procedure for the protection of employees from the unexpected energization, start-up, or release of stored energy from machines or equipment during repair, maintenance, and associated activities. The consensus standard was utilized by OSHA as the primary basis for its proposed standard.

In July 1983, OSHA developed a preproposal draft of a standard for lockout/tagout [Ex. 10]. This draft was developed by utilizing all relevant materials available to OSHA at that time. This draft was distributed to interested groups, associations, companies, unions and individuals which OSHA was able to identify as having an interest in this regulation. There were about 80 comments received in response to this preproposal draft. The commenters were generally in support of the effort to develop a safety standard for lockout and/or tagout; however, some commenters objected to the inclusion of a requirement for locking out during activities classified as "normal operations." Comments from some sources favored the use of locks rather than tags to secure energy isolating devices, while others welcomed the more flexible approach of permitting the use of locks and/or tags. Also, there was considerable comment regarding use of the Appendix. Many commenters wanted the information used in the Appendix moved into the body of the standard for enforceability. Others however, wanted the appendix material completely removed on the grounds that reference to it by the courts in contested cases would eventually determine it to be mandatory.

The comments concerning the preproposal draft, as well as all the special studies and other information available to OSHA, were utilized in the development of this proposed standard.

II. Hazards

Whenever machines or equipment are utilized in industry, there are hazards not only to the employees who work with them but many times also to other employees who are in the immediate area. Moreover, when it is necessary to perform maintenance, repair or service, not only are the hazards associated with the normal operation encountered, but additional, unique hazards are present due to the nature of the activity being conducted. These hazards are caused by the continued presence of the energy generated by the machine or equipment for utilization in performing a specific function. This energy can emanate directly from the power source or can be stored in the equipment itself.

OSHA believes that failure to control energy adequately accounts for nearly 10 percent of the serious accidents in many major industrial groups. The following accidents, taken from the NIOSH report entitled "Guidelines for Controlling Hazardous Energy During

Maintenance and Servicing" [Ex. 4], are typical of these hazards and demonstrate the applicability of the pertinent provisions in the proposed standard.

1. An employee was cleaning the unguarded side of an operating granite saw. The employee was caught in the moving parts of the saw and pulled into a nip point between the saw blade and the idler wheel, resulting in fatal injuries. (Failure to shutdown or turn off the equipment to perform maintenance—proposed § 1910.147(d)(1).)

2. An employee was removing paper from a waste hogger. The hogger had been shut down, but the conveyor feeding the hogger had not been. The employee climbed onto the machine, fell onto the conveyor, was pulled into the hogger opening, and was fatally crushed. There was no lockout procedure at this operation. (Failure to document and implement an effective energy control procedure—proposed § 1910.147(c)(2)(i).)

3. Two employees were repairing a press brake. The power had been shut off for 10 minutes. They positioned a metal bar in a notch on the outer flywheel casing so that the flywheel could be turned manually. The flywheel had not completely stopped. The men lost control of the bar, which flew across the workplace and struck and killed another employee who was observing the operation from a ladder. (Failure to control stored energy—proposed § 1910.147(d)(4).)

4. An employee was partially inside an asphalt mixing machine, changing its paddles. Another employee, while dusting in the control room, accidentally hit a toggle switch which caused the door of the mixer to close, striking the first employee on the head and killing him. Electrical switches to activate the machine were not locked out and air pressure to move the doors was not shut off. (Failure to isolate equipment from energy sources—proposed § 1910.147(d)(2).)

5. An employee was setting up a vacuum forming machine for a run of violin cases. He leaned over the press and accidentally activated the starting switch. His head was crushed between an air cylinder and the frame. (Failure to isolate equipment from energy sources—proposed § 1910.147(d)(2).)

6. An employee trainee was cleaning a flour batch mixer. The employee leaned the top part of his body into the machine when another worker activated the wrong switch, thereby turning the machine on. The employee cleaning the flour batch mixer suffered fatal crushing injuries to his neck. There was an unwritten company procedure for lockout during all maintenance. The procedure was not followed. (Failure to document and implement an effective energy control procedure—proposed § 1910.147(c)(2)(i); failure to train employees adequately in lockout/tagout procedures—proposed § 1910.147(c)(5).)

7. An employee was cleaning scrap from beneath a large shear when a fellow employee hit the control button activating the blade. The blade came down and decapitated the employee cleaning scrap. (Failure to isolate, lockout/tagout or otherwise disable all potential hazardous energy sources before attempting any repair, maintenance or service—proposed § 1910.147(c)(1).)

Servicing activities are necessary adjuncts to the industrial process. They are needed to maintain the ability of all machines, equipment or processes to perform their intended functions. Additionally, erection, installation, construction, set up, changeover, and breakdown usually require equipment de-energization. Although these operations may not always be considered maintenance, repair or service, they present the same hazards and are therefore addressed by this standard. The scope and application provisions of the proposal refer to these activities collectively as "servicing or maintenance" activities.

The above mentioned activities are currently being carried out in general industry with varying degrees of safeguarding or protection for the employee. This safeguarding or protection ranges from allowing the employee to conduct the servicing activity while the machine, equipment or process is energized and operating (virtually no protection), to requiring that the machine or equipment simply be turned off or shut down, or to providing for deenergization and lockout and/or tagout protection on the machine, equipment or process.

OSHA believes that the least desirable situation is to allow employees to perform a maintenance, repair, or service activity while the machine, equipment or process is energized and capable of performing its intended production function. The Agency recognizes that there are certain servicing operations which, by their very nature, must take place without deenergization, such as the testing of energized equipment or processes. Additionally, certain normal production operations, which are not intended for coverage by this standard, such as repetitive minor adjustments, can sometimes safely be done wihtout the machine, equipment or process being de-energized and locked out and/or tagged out, with the use of specific control devices, work practices, employee training and other measures. Nevertheless, the vast majority of servicing activities can safely be done only when the machine, equipment or process is de-energized and is not operating.

Even though there are servicing operations whose safe performance does not require that a machine, equipment or process be de-energized and locked out and/or tagged out, it must be emphasized that these operations do *not* include the practice of using the motion of the components of a machine or equipment as an aid in performing the servicing operation. Practices such as the cleaning of rollers of printing presses or the feed points of screw conveyors while the equipment is operating not only expose the employee to the hazards of the normal operation, but invariably increase the potential for an accident due to the servicing activity.

Performance of servicing activities on a machine or equipment that is in operation has the potential of exposing the employees to contact with moving components at the point of operation or with power transmission components, and also increases the risk of injury due to the position the employee must assume and the need to remove, bypass or disable guards and other safety devices. In many cases, these activities expose the employee to the hazard of being pulled into the operating equipment when the material used for cleaning or servicing becomes entrapped in the equipment mechanism. The use of extension tools or devices to remove the operator's hands from the danger areas, while of some benefit in reducing direct employee exposure to the hazards of entrapment can in themselves result in injuries to employees. This occurs when an employee is struck by the tools or devices that inadvertently come in contact with moving machine components, and are pulled from the employee's grasp.

However, shutting down a machine or equipment usually is not the total solution to the problem. Once the machine or, equipment has been stopped, there remains the potential for employee injury from the unanticipated movement of a component of the machine or equipment, or of the material being handled. This unanticipated movement can be caused either by the release of residual energy within the machine, equipment or process, or as the result of the conversion of potential energy to kinetic energy (motion). For example, residual energy can be

manifested by the presence of springs under tension or compression, or by the presence of pressure (either above or below atmospheric) in systems containing gases or liquids.

Potential energy is considered to be a function of the height of an object above some datum plane. This datum plane is usually considered to be where that object would come to rest if the restraint holding the object were released, such as where the upper die in a punch press is positioned above the lower die. If the restraining device holding the upper die in place were to be removed, the potential energy of the upper die would be converted into kinetic energy (downward motion), and the upper die would be propelled downward, coming to rest on the lower die. This motion could cause a crushing, cutting, lacerating, amputating or fracture injury to an employee's arm, hand or some other part of the body which occupied the area between the dies.

OSHA believes that the most effective method to prevent employee injury caused by the unanticipated movement of a component of a machine or equipment, or of the material being handled, is either to dissipate or minimize any residual or potential energy in the system, or to utilize a restraining device or system to prevent movement. This can be accomplished by moving components to a point at which springs are at or near a neutral state; by moving components so that liquids or gases reach or approximate atmospheric pressure; and by blocking material or components or moving them to a point of minimum potential energy (moving components downward to a stable, resting position).

Further, even though the machine or equipment has been shut off, and even if residual energy has been dissipated, an accident can still occur if there is an inadvertent activation of that machine or equipment. Inadvertent activation can occur due to an error on the part of the employee who is conducting the maintenance, repair or service activity, or by any other person. For example, the servicing employee can unintentionally cause the machine or equipment to start by shorting across electrical switches or by accidentally moving controllers (either electrical controls or valves) into the "on" or "open" position.

An accident can also occur when another person not engaged in the servicing operation causes the activation of the system being serviced. This can occur when a person uses the wrong controller and starts a machine or equipment that the employee did not intend to start. It can also occur when a person finds a machine or equipment not operating and starts it, without knowing someone else is performing service on it. This latter type of accident is more apt to occur when the machine or equipment is large and/or complex, and the employee who is conducting the servicing activity is in an area of the equipment which is some distance from or not visible from the controls.

The generally accepted best means to minimize the potential for inadvertent activation is to ensure that all power to the machine or equipment is isolated, locked or blocked and dissipated at points of control, using a method that cannot readily be removed, bypassed, overridden or otherwise defeated. In the case of an electrically run machine, piece of equipment or process, this can be done by going back toward the original source of the power and shutting off a main switch or by disconnecting the electrical lines. OSHA believes that this action must be followed by the placement of some safeguard to prevent the re-energization of the circuit during servicing. To ensure that another employee will not attempt to restart the machine or equipment or to re-energize the circuit, there must be some assurance that all other employees know that the circuit is de-energized and must remain so. This can be accomplished by the utilization of a standardized procedure for de-energizing the system, and training of all employees to familiarize them with that procedure. Additional training is also needed for those employees who must utilize the procedure and for those employees who are or may be exposed to the hazards of the unanticipated re-energization of the machine or equipment.

Even if all other protective measures are taken, accidents can still occur following the completion of the maintenance, repair or servicing activity, if the machine, equipment or process is re-energized and started before all guards and other safety devices have been replaced, or reinstalled. Additionally, all tools and other foreign objects must be removed from the location and a check completed to ensure that no employees are in a place where the re-energization and starting of the machine or equipment will endanger them.

III. Accident Data

The collection of data on accidents resulting from a failure to utilize proper lockout and/or tagout procedures is hampered because many accidents are not reported; are reported only locally; or are reported and categorized under other causal factor categories (such as "caught-in" or "caught-between"). Incorrect categorization is particularly true for lockout/tagout related accidents, since the injuries often occur at a distance from the energy source which was not properly controlled. As a result, OSHA believes that the data available represent only a portion of the total injuries and fatalities that have occurred. However, OSHA believes that the accidents which have been investigated and studied as being "lockout related" provide a graphic illustration of the extent of the problem, the causal factors, the distribution of accidents in industry, and the type and severity of injuries resulting from those accidents.

There have been several studies conducted to determine the magnitude and extent of the problem. These studies were conducted by: (a) The U.S. Department of Labor, Bureau of Labor Statistics; (b) OSHA's Office of Data Analysis (formerly Office of Statistical Studies and Analysis); (c) the National Institute for Occupational Safety and Health (NIOSH); (d) OSHA's Office of Experimental Programs; and (e) OSHA's Office of Mechanical Engineering Safety Standards. The studies are discussed in the following paragraphs.

A. Bureau of Labor Statistics Work Injury Report Study

The first study examined by OSHA was the Work Injury Report Study entitled "Injuries Related to Servicing Equipment" [Ex. 3]. This study is a compilation of reports of accidents and follow up survey questionnaires sent out by the Bureau of Labor Statistics (BLS). The survey, conducted from August to November 1980, covered workers who were injured while cleaning, repairing, unjamming or performing other non-operating tasks on machines, equipment and electrical or piping systems. BLS identified accidents from 25 participating states, and mailed each of the injured employees a follow-up questionnaire containing inquiries about the specific details of their accidents. There were 1,285 questionnaires sent out and 833 (approximately 65 percent) of the employees responded. Not all questions were responded to by all participants, since many of the questions related to situations which may not have been relevant to the circumstances of each injury. In some instances, many of the respondents also gave multiple responses to a single question.

Tables I through V present tabulations of the results of the BLS Work Injury Report Study.

TABLE I.—INDUSTRY DISTRIBUTION—BY STANDARD INDUSTRIAL CLASSIFICATION (SIC) MAJOR DIVISION AND COMPANY SIZE

	Workers	Percentages[1]
Division—Industry:		
A—Agriculture, forestry, and fishing	12	1
B—Mining	1	
C—Construction	35	4
D—Manufacturing	619	74
E—Transportation and public utilities	19	2
F—Wholesale trades	57	7
G—Retail trades	31	4
H—Finance, insurance, and real estate	8	1
I—Services	43	5
J & K—Others	8	1
Total	833	100
Size of the companies at which accidents occurred:		
1-19 employees	159	20
20-49 employees	123	15
50-99 employees	120	15
100-499 employees	234	29
500 or more employees	158	20
Total	[2]794	100

Notes:
[1] Due to rounding, percentages may not add to 100.
[2] The total of each table represent the number of respondents answering the pertinent question(s) of the survey.

TABLE II.—OCCUPATIONAL DISTRIBUTION

Occupation	Workers	Percent
Operations, excluding transport	373	45
Craft and kindred workers	281	34
Laborers, excluding farm	94	11
Service workers, excluding private household	19	2
Clerical and kindred workers	19	2
Managers and administrators	13	2
Professional, technical, and kindred	12	1
Transport equipment operators	10	1
Farm laborers and supervisors	8	1
Nonclassified	4	(*)
Total	833	100

Note: Due to rounding, percentages may not add to 100.
* Less than 0.5.

TABLE III.—CIRCUMSTANCES OF INJURY

	Workers	Percent [1]
How did injuries occur?		
Injured by moving machine part	735	88
Injured by contact with energized electric parts	45	5
Injured by burners, hot liquids or other hazardous materials	29	3
Injured by falling machine parts	10	1
Other	14	2
Total	833	100

TABLE III.—CIRCUMSTANCES OF INJURY—Continued

	Workers	Percent [1]
Was equipment turned off before doing task?		
No	653	78
Yes	180	22
Total	833	100
If equipment not turned off, reason(s) given:		
Worker felt it would slow down production or take too long	112	19
Not required by company procedure	69	12
Worker did not know how to	8	1
Did not think it necessary	209	35
Task could not be done with power off	209	35
Worker did not realize power was on	62	10
Other reasons	61	10
Total	592 [2]	—[2]
If equipment was turned off:		
a. What happened at the time of injury?		
Injured employee accidentally turned equipment on	20	11
Co-worker accidentally turned equipment on	15	9
Co-worker turned equipment on, not knowing equipment was being worked on	56	32
Equipment or material moved when jam-up cleared	9	5
Parts were still in motion (coasting)	30	17
Other reasons	46	26
Total	176	100
If equipment was turned off:		
b. Were additional steps taken to de-energize equipment?		
No—not necessary	49	31
No—not required by company	23	14
No—would slow down production	8	5
No—worker did not have tools	4	2
No—other reason	20	13
No—reason not given	37	23
Disconnected main power	14	9
Tagged out equipment power controls	6	4
Disconnected electric line	5	3
Drained pressure or hazardous material	9	6
Other	11	6
Total	160 [2]	—[2]

Notes:
[1] Due to rounding, percentages may not add to 100.
[2] Because more than one response is possible, the sum of the responses and percentages may not equal the total number of persons who answered the question.

TABLE IV.—TRAINING

	Workers	Percent
Was lockout instruction provided employees?		
Total	554	100
Yes	214	39
No	340	61
If instruction provided, in what form?		
Total	273	100
Provided printed instructions	25	9
Procedures posted on equipment	37	14
Instruction given as part of on-the-job training	176	64
Formal training given at meeting, etc.	28	10
Other	7	3
When was lockout instruction given?		
Total	[1] 186	[1] 100
After the accident	15	8
One to six months before accident	36	19
Six months to a year before accident	28	15
Upon hiring	84	45
Over a year before accident	60	32

Note:
[1] Because more than one response is possible, the sum of the responses and percentages may not equal the total. Percentages are calculated by dividing each number of responses by the total number of persons who answered the question.

TABLE V.—ESTIMATED LOST WORKDAYS

No. of lost workdays	Workers	Percent
Total	793	100
No time lost	107	13
1-5 workdays lost	132	17
6-10 workdays lost	95	12
11-15 workdays lost	75	9
16-20 workdays lost	47	6
21-25 workdays lost	47	6
26-30 workdays lost	60	8
31-40 workdays lost	49	6
41-60 workdays lost	54	7
More than 60 workdays lost	41	5
No indication of number of lost workdays	86	11

B. Analysis of 83 Fatality Investigations by OSHA's Office of Data Analysis

The second study examined by OSHA was the compilation of data from 83 fatality investigations conducted by OSHA between 1974 and 1980. This report is entitled, "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations"; [Ex. 5]. All of these accidents were identified as having been caused by failure to properly lockout machines, equipment or systems prior to performing maintenance, repairs or servicing.

Tables VI through VIII present tabulations of the results of the OSHA Analysis of 83 fatality investigations.

TABLE VI.—CAUSAL FACTORS

Cause	Number	Percent
Total	83	100
Lack of adherence to safe work practices (no procedure or failure to follow procedure)	21	25
Accidental or inadvertent activation	29	35
Failure to deactivate	21	25
Equipment failure	7	8
Other	5	6

NOTE: Due to rounding, percentages may not add to 100.

TABLE VII.—AGENT OF INJURY

Agent	Number	Percent
Total	83	100
Agitators and mixers	12	14
Rolls and rollers	11	13
Conveyors and augers	11	13
Saws and cutters	11	13
Hoists	8	10
Earth moving	6	7
Crushers and pulverizers	4	5
Forges and presses	4	5
Electrical apparatus	4	5
Vehicles	3	4
Other	9	11

TABLE VIII.—EMPLOYEE ACTIVITY

Activity	Number	Percent
Total	83	100
Conducting normally assigned duties	69	83
Conducting other sites	14	17

In analysing the 83 fatality investigation reports and assigning causes to each accident, no attempt was made to draw conclusion or inferences beyond the information contained in the reports. For example, if the employee was killed in operating machinery, unless the report stated otherwise, the cause of the accident was considered to be failure to shut off the machine, rather than a combination of causal factors such as failure to shut off the machine, failure to lockout and/or tagout, failure to document adequate procedures, and failure to provide sufficient employee training. Additionally, if a machine was found to be running, it was assumed that the employee failed to shut off the machine rather than that another employee restarted the machine.

C. Analysis of 125 Fixed Machinery Fatalities by OSHA's Office of Data Analysis

A separate study by OSHA's Office of Data Analysis is entitled "Occupational Fatalities Related to Fixed Machinery as Found in Reports of OSHA Fatality/Catastrophe Investigations" [Ex. 6]. This study contained in analysis of investigative reports of 125 fatilities involving fixed machinery which occurred between 1974 and 1976, and which were investigaed by OSHA. The primary causal factors under which the accidents were classified were operating procedures, accidental activation, lack of machine deactivation, equipment failure, and other causes.

The following is a tabulation of the results of this study.

TABLE IX.—CAUSAL FACTORS OSHA ANALYSIS OF 125 FATAL ACCIDENTS

Causal factor	Number	Percent
Total	125	100
Failure to adhere to safe operating procedures	41	33
Accidental machine activation	31	25
Machine not deactivated	23	18
Equipment failure	21	17
Other	9	7

D. National Institute for Occupational Safety and Health, Guidelines for Controlling Hazardous Energy During Maintenance and Servicing

The next study considerd by OSHA was one done by the National Institute for Occupational Safety and Health (NIOSH) [Ex. 4]. Fifty-nine out of a total of 300 accident reports were analyzed to illustrate situations in which adequate control of energy might have prevented the accidents. These case files were selected because they contained sufficient detail to enable NIOSH to evaluate the accidents and determine what counter measures might have been available to prevent the accidents.

The report indicated that these types of accidents are preventable if effective energy control techniques are available, the workers are trained to use them, and management provides the motivation to ensure their use.

The following is a tabulation of the results of the study.

TABLE X.—CAUSAL FACTORS NIOSH STUDY

Factor	Number	Percent
Total	59	100
Failure to de-energize machine or control energy	27	46
Accidental re-energization	25	42
Ineffective energy isolation	6	10
Disregarding residual energy	1	2

E. Analyses of Fatality/Catastrophe Reports and General Duty Clause Citations by OSHA's Offices of Experimental Programs and Mechanical Engineering Safety Standards

There were two additional OSHA studies which were conducted jointly by the Office of Experimental Programs and the Office of Mechanical Engineering Safety Standards. These studies were compilations and analyses of OSHA Form 36 reports [Ex. 7] and OSHA 5(a)(1) citations [Ex. 8], respectively.

An OSHA Form 36 (Preliminary Fatality/Catastrophe Event Report) is prepared each time an Area Office is notified of a serious accident resulting either in a fatality or in serious injury to five or more employees that necessitates their hospitalization. This report is used to determine whether or not OSHA will conduct an investigation of the circumstances surrounding the accident. Since OSHA did not receive notification of all accidents resulting in a fatality or catastrophe, the total number of workplace fatalities and serious injuries which occurred during this study period. However, OSHA believes that the cause of, and the circumstances leading to, the accidents clearly demonstrate the nature and seriousness of lockout/tagout-related accidents.

The Form 36 study which analyzed data reported during the period 1982–1983 [Ex. 7], utilized a list of 443 fatalities. Of these fatilities, which all occurred in industries subject to the present proposal, it was determined that 36 (8.1 percent) would have been prevented by the use of effective lockout and/or tagout procedures.

The second study [Ex. 8] used information developed by OSHA's Office of Mechanical Engineering Safety Standards which identified, categorized and logged "general duty" clause (section 5(a)(1) of the OSH Act) citations from 1979 to 1984. A general duty clause citation is issued when, during an inspection, a "recognized hazard" is detected which is causing or is likely to cause death or serious physical harm to an employee, but which is not addressed in an OSHA standard applicable to that industry.

The citations in the latter study have been broken down between maritime, construction, and general industry. The general industry citations were further subdivided to reflect the nature of the hazard which the citation addressed, such as hazardous materials or material handling. When there was special Agency interest in an industry or hazard, the citations were further

broken down by industry sector (such as oil and gas well drilling).

From 1979 through 1984, 3,638 inspections were conducted which resulted in the issuance of general duty clause citations. Of these 3,638 inspections, there were 376 inspections in which the failure to control hazardous energy was cited. Hence, in approximately 10 percent of all inspections which resulted in the issuance of at least one General Duty clause citation, herein referred to as a 5(a)(1) citation, failure to lockout and/or tagout as identified. [Ex. 8]

The following is a tabulation of breakdown of lockout citations by industry division.

TABLE XI.—INDUSTRY PROFILE OSHA 5(a)(1) LOCKOUT CITATIONS

Industry divisions	Number of citations	Percent
Total	376	100
A—Agriculture, forestry and fishing	2	.5
B—Mining	4	1.1
C—Construction	18	4.8
D—Manufacturing	310	82.4
E—Transportation and public utilities	11	2.9
F—Wholesale trades	14	3.7
G—Retail trades	5	1.3
H—Finance, insurance and real estate	0	0
I—Services	12	3.2
J—Public administration	0	0
K—Not otherwise classified	0	0

TABLE XI.—INDUSTRY PROFILE OSHA 5(a)(1) LOCKOUT CITATIONS—Continued

Industry divisions	Number of citations	Percent
Unknown	0	0

NOTE: Due to rounding, percentages may not add to 100.

IV. Basis For Agency Action

OSHA believes that there exists a sufficient body of data and information upon which a reasonable standard can be based to reduce the number of fatalities and injuries resulting from failure to utilize proper and adequate practices and procedures for the control of potentially hazardous energy. This position is based upon an analysis of the accident data available to OSHA, all of which is in the docket of this rulemaking proceeding.

Most accident reports break down the relevant information in accordance with the classifications contained in the American National Standards Institute, ANSI Z16.2, "Method of Recording Basic Facts Relating to the Nature and Occurrence of Work Injuries" [Ex. 11]. These classifications are: The nature of the injury, part of the body, source of the injury, accident type, hazardous condition, agency of injury and unsafe act. Many accident reports are generated primarily to document the occurrence of accidents and concentrate on the information which is neccessary to process workers' compensation claims. For this reason, they tend to emphasize information about the injury rather than the events and conditions which caused the accidents. Therefore, most of the pertinent information identifying the nature and extent of the problem of controlling hazardous energy was gathered by OSHA by conducting the special studies referred to above. Because of the limitation on the available data, no single study in itself can be expected to provide conclusive support for comprehensive regulation of lockout/tagout hazards. However, the studies and other available data, when considered as a whole, clearly indicate not only the scope and extent of the problem, but also the need for a comprehensive standard. The studies are consistent in their demonstration of the causative factors involved in lockout-related accidents, and they provide strong evidence for the potential effectiveness of OSHA's proposed rule in dealing with those factors.

OSHA believes that the hazards associated with the failure to control hazardous energy are widespread. The following table indicates the distribution, by industry, of the accidents reported in the Bureau of Labor Statistics (BLS) Work Injury Report Study (WIR) and in the OSHA 5(a)(1) study citations discussed earlier.

TABLE XII.—INDUSTRY PROFILE BLS WIR AND OSHA 5(a)(1) CITATIONS

Industry (by division)	BLS	Percent	5(a)(1)	Percent
A—Agriculture, forestry and fishing	12	1	2	.5
B—Mining	1	—	4	1.1
C—Construction	35	4	18	4.8
D—Manufacturing	619	74	310	82.4
E—Transportation and public utilities	19	2	11	2.9
F—Wholesale trades	57	7	14	3.7
G—Retail trades	31	4	5	1.3
H—Finance, insurance and real estate	8	1	0	0
I—Services	43	5	12	3.2
Other or unknown	8	1	0	0
Total	833	100	376	100

Although employees in almost every industrial division are exposed to the hazards associated with the unexpected energization or start up of machines or equipment, or by the unanticipated release of stored energy, the preponderance of the accidents and injuries occur in Construction (Division C), Manufacturing (Division D), Wholesale trades (Division F), and Services (Division I). It should be noted that Services includes many employers who perform maintenance on equipment in manufacturing and other sectors covered by Part 1910.

OSHA's evaluation of 5(a)(1) citations that involve failure to control hazardous energy indicates that this area accounts for about 10 percent of the serious hazards not presently covered by a specific OSHA standard. The seriousness of the hazard is highlighted by the fact that 5(a)(1) citations are issued only for recognized hazards which cause or are likely to cause death or serious physical harm, while the OSHA Form 36 is initiated only when OSHA is notified of deaths or multiple hospitalizations. Further analysis of the lost workday data from the BLS WIR indicates that the severity of injuries from failure to control hazardous energy sources (an average of 24 lost workdays per lost time injury) is much higher than the national industry-wide average of 16 lost workdays [Ex. 14].

In developing this proposal, OSHA has estimated the total numbers of fatalities, lost-workday injuries, and minor injuries attributable to lockout-related accidents. These estimates were

based on an extrapolation of the available national data sources discussed earlier [Ex. 3, 5, 6, 7]. From these data the number of preventable accidents were determined. It was estimated that adopting the proposed rule would prevent approximately 31,900 minor (non-lost-workday) injuries; 28,400 lost-workday injuries; and 122 fatalities per year (based on 1984 employment levels) [Ex. 17]. These estimates were derived by identifying the percentage of accidents, in various data sources, which were determined to be lockout/tagout-related and applying those percentages to the number of accidents. It was determined that two percent of all nonfatal accidents and 7.1 percent of all fatalities were lockout/tagout-related.

In addition, the data indicate that the risk of accidents and injuries exists in all places of employment. This finding is predicated upon the distribution by size of the companies which employed the injured employees surveyed in the BLS WIR. In the survey, almost as many respondents (392, or 49 percent) reported that they were employed at facilities of 100 or more employees as those who were employed at facilities of less than 100 employees (402, or 51 percent).

Based upon analysis of all of the aforementioned evidence, OSHA believes that the failure to control hazardous energy results in a significant risk to employees. Further, the data clearly demonstrate that the consequences of an accident involving failure to lockout/tagout are more severe in terms of lost workdays than the average industrial accident. OSHA also believes that a significant risk from hazardous energy sources extends across many segments of industry.

OSHA has also analyzed the studies to determine the underlying causes of the conditions which existed when lockout/tagout-related accidents occurred. From this information, OSHA developed a list of measures which would have prevented most of the accidents in the studies, and used this list as the basis of its proposed standard. It should be noted that the studies vary widely in the quantity and quality of the information provided for the reported accidents (different methods of reporting, and incompleteness of the findings of the causes of the accidents, for example). Therefore, professional judgment was used in the interpretation of the results of the studies, in order to provide a comprehensive evaluation of the data and to correlate the information on accident causation. While the numbers and percentages from one study to another do not necessarily agree, the studies all indicate the existence and seriousness of the problems, and provide valuable information as to corrective measures that are necessary. Tables XIII through XVIII below cover what OSHA believes are the major causal factors in lockout-related accidents, and indicate the prevalence of such factors as reflected in the different accident studies.

TABLE XIII.—SERVICING ACCIDENTS OCCURRING WHILE EQUIPMENT IS OPERATING

Study (total considered)	Number	Percent
BLS WIR (833)	653	78
OSHA Analysis of 83 fatalities (83)	54	65
OSHA Report of Fixed Machinery (125)	23	18
NIOSH Study (59)	27	46

The reasons most often given in the BLS WIR for not turning off equipment prior to servicing were that it would take too long or slow down production; it was not required by the employer; it was not necessary; or the task could not be done with the equipment off.

As pointed out in the Hazards section of this Notice, just shutting off a machine, equipment or process may not completely control the hazardous energy. Even after a machine, equipment or process is shut down, residual energy may still be present in the form of moving components, spring or hydraulic pressure, the force of machine parts on items which have become jammed, or the energy which is stored in machine, equipment, or system components due to their position (potential energy).

TABLE XIV.—ACCIDENTS DUE TO FAILURE TO ENSURE POWER OFF

Study (total considered)	Number	Percent
BLS WIR—Failure to check for power on (592)	62	10
OSHA Analysis of 83 Fatalities (83)	5	6
NIOSH Study (59)	6	10

The Hazards portion of this Notice also discussed the fact that even though the machine, equipment or process has been shut down, and the residual energy controlled or dissipated, an employee can still be injured if the machine, equipment or process is restarted by either that employee or another employee. Injury can occur by an employee inadvertently contacting switches, valves or other controllers or by an employee activating the equipment without recognizing the reason it was shut off, and inadvertently exposing other employees to the potential hazard.

TABLE XV.—ACCIDENTS DUE TO INADVERTENT ACTIVATION

Study (total considered)	Number	Percent
BLS WIR (176)	91	52
OSHA Analysis of 83 fatalities (83)	29	35
OSHA Report on Fatalities Related to Fixed Machinery (125)	31	25
NIOSH (59)	25	42

Clearly, it is insufficient simply to shut off machinery to conduct repair, maintenance or servicing. OSHA believes that some means must be utilized to ensure that employees are safeguarded during those operations.

After servicing, there is also the need to ensure that all guards have been replaced, that all tools and other extraneous materials have been removed from the machine, equipment or process, and that re-energizing and starting normal operational usage will not subject an employee to the increased potential for injury. This is especially true when the maintenance, repair or service is conducted at or near an employee's workstation.

OSHA believes that many of the problems of de-energization and re-energization of machines or equipment can be reduced by the employer's development and implementation of a standardized operating procedure for servicing/maintenance operations. Such a procedure should identify the necessary steps to be taken before, during, and after servicing of equipment, and should provide employees with an understanding of the procedure itself and the reasons why it must be followed. A standardized procedure can provide the details to be followed in performing servicing operations safely, together with the training and motivation needed to assure that employees understand and implement those details.

TABLE XVI.—ACCIDENTS ATTRIBUTABLE TO EMPLOYEE NOT HAVING OR KNOWING OF A PROCEDURE

Study (total considered)	Number	Percent
BLS WIR (653)	482	74
OSHA Report on Fatalities Related to Fixed Machinery (125)	41	33

OSHA believes that employee involvement in and understanding of the procedure and their role in the implementation of the procedures are critical to its success. Without these elements and commitments from management, the effectiveness of the procedure can be seriously compromised. Proper training in the procedure, and explanation of how it works and why, are crucial to its implementation by the employee. Even though there can be no exact quantification of the effects of training employees, the BLS WIR Study gives an indication of the effect of the *lack* of training in the necessary measures to be taken in de-energizing machines, equipment or processes (see Table XVIII below).

TABLE XVII.—LOCKOUT TRAINING OF INJURED EMPLOYEES SOURCE: BLS WIR (FROM 613 RESPONSES)

Type of training	Number	Percent
Printed instruction	25	4
Procedures posted on equipment	37	6
Training at job orientation, at meetings, or otherwise	211	34
No training	340	55

Of those injured employees who had received training, 15 stated that their training had occurred *after* their accident. Additionally, 60 employees stated that they had received their training more than a year prior to the accident. Even though training had been provided at some time during employment, the length of time between the receipt of the training and the accident is a limiting factor on any beneficial effect that has been derived from the training. OSHA has recognized in this proposed standard the need for remedial or refresher training to be conducted at least annually.

Based upon an analysis of the rulemaking record to date, OSHA believes that the safe performance of activities such as repair, maintenance and servicing, requires the de-energization of machines or equipment whenever feasible. Further, in order to ensure that servicing activities are conducted safely, a servicing procedure must be established for their performance. This procedure must call out the steps to be taken to de-energize the machine, equipment or process; to ensure that the de-energization is sufficiently complete; to dissipate or prevent the release of residual energy; to ensure that the machine, equipment or process cannot be re-energized accidentally or unexpectedly; and to ensure that the re-energization is accomplished safely. The establishment and implementation of this procedure must be coupled with sufficient initial and follow up training to ensure the successful utilization of the procedure.

V. Summary and Explanation of the Proposal

This section contains a discussion of the individual requirements of this proposal. The proposal, if adopted, will add provisions that will address the documentation of procedures and use of safe work practices for the control of potentially hazardous energy. It would also require the training of employees in the use of these practices and procedures. An appendix to § 1910.147 would be provided to serve as a nonmandatory guideline in complying with the requirements of this section, as well as to provide other helpful information. OSHA invites public comments on these as well as any other issues raised by this proposal.

In paragraph (a), OSHA defines the scope, application and purpose of the standard for the control of hazardous energy (Lockout/Tagout). Because the need to control hazardous energy is not unique to any one industry, paragraph (a)(1)(i) sets forth OSHA's intent that except as discussed below, the standard will cover servicing and maintenance in general industry where the unexpected energization, start-up or release of stored energy from machines or equipment could cause injury to employees. The proposal does not contain specifications which must be followed in all circumstances, but, rather, provides flexibility for each employer to develop a program and procedure which meets the needs of the particular workplace.

While the proposed lockout/tagout standard is designed to have broad applicability to U.S. industry, certain industry sectors are not covered for one of the following reasons; which are discussed at length below:

(1) The present proposal is limited to general industry employment under 29 CFR Part 1910—construction, maritime and agricultural employment are not covered by the proposal; and (2) certain installations are not covered by this proposal because comprehensive energy control measures for those facilities are contained in forthcoming proposed rules.

In the first category, as proposed in paragraph (a)(1)(ii)(A), OSHA has determined that the present rulemaking effort be limited in scope to general industry. Development of appropriate energy control procedures for construction, maritime, and agricultural employments, respectively, will be considered for future rulemaking proceedings. OSHA believes that incorporation of the unique aspects of these three industry sectors into the present rulemaking would unduly complicate the development of a generic energy control procedure for general industry. At the conclusion of the present rulemaking proceeding, the Agency will be better able to evaluate the applicability of a generic energy control procedure and determine the types of changes that should be made for proposed procedures for construction, maritime and agriculture. However, OSHA welcomes views and comment on this issue and requests answers to the following questions:

1. Is this proposed rule appropriate for application to construction, maritime, and agriculture?

2. What modifications to the proposed rule are needed to make it more responsive to the unique hazards and working conditions in those industry sectors? and

3. What accident and injury data and other information are available to assist the Agency in developing proposals in these areas?

Secondly, OSHA is proposing that certain installations under the exclusive control of electric utilities, as defined in paragraph (a)(1)(ii)(B), not be covered by this rule. These installations are intended to be covered separately by a new section, § 1910.269, "Electric Power Generation, Transmission and Distribution," which OSHA expects to propose in the near future. Because of the unique nature of electrical utility operation, § 1910.269 will tailor the key provisions of this standard on lockout and/or tagout to meet the special safety needs of that industry. However, non-utility employers and workplaces that are engaged in the activities of power generation, transmission and distribution *would* be covered by the present proposal and are not within the intended scope of § 1910.269. Whether or not this suggested demarcation is reasonable will be a subject for discussion in the Electric Power proposal.

Further, OSHA proposes in paragraph (a)(1)(ii)(C) that exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations which is covered by Subpart S of Part 1910 also be excluded from coverage by the proposed standard. OSHA intends coverage for this work to be provided instead in a separate rulemaking on "Safety Related Electrical Work Practices," which was proposed for new §§ 1910.331 through

1910.335 as an amendment to Subpart S on November 30, 1987 (52 FR 45530). Those sections have their own provisions for dealing with lockout/tagout situations, and for controlling employee exposure to hazardous electrical energy with the use of electrical protective equipment. They will be based largely on a national consensus standard, NFPA 70E–Part II, "Safety Related Work Practices."

Similarly, proposed paragraph (a)(1)(ii)(D) would exclude oil and gas well drilling and servicing installations from coverage by this proposed rule. These installations are intended to be covered separately by a new § 1910.290, Oil and Gas Well Drilling and Servicing. A proposed § 1910.290 was published on December 28, 1983 (48 FR 57202). The Agency is currently developing a revised proposal to reflect the new information in the rulemaking record. The hazards involving lockout/tagout that are unique to oil and gas well drilling and servicing will be given a complete evaluation during that rulemaking process and appropriate steps will be taken to control them.

In determining the appropriate scope of the standard, OSHA reviewed available data. While the information indicated that the problem is more concentrated in the manufacturing sector, it nonetheless found evidence of hazards throughout industry sectors. Efforts to delineate the scope of the standard to those Standard Industrial Classification codes (SICs) in which the hazards occurred proved impossible. The mere fact that SICs provide a convenient dividing line for coverage from an economic or administrative standpoint was not, in and of itself, considered sufficient grounds to justify including some employees and excluding others who might be exposed to the same or similar hazards. The facts also proved that the need to control hazardous energy was not unique to any one industry and did, indeed, cut across SIC code lines.

Consequently, OSHA decided to propose a standard addressing only specified hazards of machines or equipment and specified employee activities, but with a scope broad enough to allow application of the standard to any sector of industry. This approach is based on the fact that the costs of the standard are limited to those situations where hazards exist. The costs to employers of determining whether or not they have machinery or equipment covered by the standard are assumed to be minimal. OSHA is specifically requesting information on whether this is an accurate assumption.

Additionally, OSHA is soliciting comments on whether certain industry sectors, types of machines, or activities covered by the proposed standard should be considered for exclusion, and what data are available to substantiate the recommended exclusions. The information requested should include specific accident and injury data or evidence that risks are not significant with regard to the industry sector, type of machine, or activity suggested for exclusion. Based on all the information made available, a determination will be made whether to exclude these industry sectors, types of machines or activities in the final rule or whether modification should be made to the proposal to reflect unique conditions.

In paragraph (a)(2)(i), OSHA is proposing that the standard apply to servicing or maintenance of machines or equipment. These functions are defined in paragraph (b) to include activities such as erecting, installing, constructing, adjusting, setting up, inspecting, and maintaining or repairing, machines or equipment. It is during these activities, at one time or another, that energy must be introduced to a system, removed, isolated and reintroduced in order to accomplish the task. It is also during these activities that employees are exposed to the unexpected energization, start-up or release of stored energy against which the control procedures established in this proposal are designed to provide protection.

There are some situations in which lockout/tagout may not be effective or appropriate, and the proposal would not require the use of locks and or tags in these circumstances. In paragraphs (a)(2) (ii) and (iii), OSHA lists those situations where lockout and/or tagout provisions do not apply. In paragraph (a)(2)(ii)(A), OSHA is proposing that the standard not apply when employees are working on cord and plug type electrical equipment for which exposure to the hazards of unexpected energization, start-up, or release of stored energy of the equipment is effectively controlled by other measures. This exclusion would encompass the many varieties of portable hand tools that are found in the workplace, as well as cord and plug equipment which is intended for use at a fixed location. Examples of equipment these measures apply to would include types such as those used in wood, metal, and food processing operations and could involve circular saws, band saws, grinders, mixers, etc.

For most plug and cord type electrical equipment, the *effective* control measure to be used when performing maintenance and servicing activities would involve unplugging the connecting plug from its receptacle. It would also involve a work practice for the employee doing work that would prevent him or her from being injured as a possible result of another employee replacing the plug and energizing the equipment while it was being worked on. Consequently, OSHA would expect the employee performing work on the equipment to place the disconnecting plug and cord close to his or her side, or at least in a place that is easily seen from the work area. Further, if stored energy is present in the system, it must be relieved or restrained before starting work on the equipment.

The discussion above, while applicable to plug and cord type electrical equipment intended for use in a specific location, is not intended to address the simple situation involving the performance of simple tool changes on portable plug and cord type hand tools. The control methods for such tool changes will usually be very simple. For example, where an employee must change the bit in a hand-held drill, or the belt on a belt sander, there would be no need to remove the plug from the receptacle. On equipment of this type, control of the activating mechanism of the tool is entirely in the hands of the employee who is using it, thereby *effectively* preventing its unexpected activation by another person.

Paragraph (a)(2)(ii)(B) proposes that the use of lockout/tagout procedures would not apply to "hot tap" operations when continuity of service or process operation is essential, and complete shutdown of the system impractical, provided that documented procedures and special equipment are used by the employer which will provide proven effective protection for employees. This provision is intended by OSHA to address the petroleum industry's concern (Ex. 16) for the handling of "hot tap" operations commonly used in their facilities, although it might also address other similar operations.

The "hot tap" procedure is employed in repair, maintenance, and service activities, and involves the cutting and welding of equipment (pipelines, vessels or tanks) under pressure in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam and petrochemical distribution systems. Special metal cutting and welding equipment and specific operating procedures are used to limit explosion hazards. The operation may be performed by in-house

maintenance personnel or by outside contractors.

The use of "hot tap" procedures appears to avoid several safety risks which would otherwise arise in servicing equipment which is under pressure. First, process shutdowns and start-ups with equipment of this nature pose extreme hazards of explosions and fires due to the complexities and interrelationships among process components. For example, during start-up it is necessary to purge pipelines of air, water and/or inert gases before hydrocarbons are introduced. Malfunctions or operator errors during purging could easily create explosive mixtures in the equipment. In other instances, process shutdowns and start-ups can result in rapid condensation within the process equipment and may cause "water hammers," which are sudden pressure changes that can shake, vibrate and stress equipment to the extent that pipeline breaks or connection leaks develop. Finally, a third class of hazard avoided is one created by the much higher level of worker activity required during a complete process shutdown or start-up. This may result in more extensive worker exposure to the hazards of the shutdown or start-up procedure, and in greater potential for injury then would be involved in performance of "hot tap"-type activities, in which fewer employees would be exposed.

The American Petroleum Institute's (API) publication, "Procedures for Welding or Hot Tapping on Equipment Containing Flammables," Publication 2201, Second Edition, November 1978, (Ex. 16), provides established procedures for "hot tap" operations. The utilization of these or similar procedures would be considered by OSHA as meeting the intent of the proposed paragraph (a)(2)(ii)(B). Concerning this kind of work, OSHA requests comment on the following:

(1) Do the API procedures adequately address "hot tap" operations?

(2) Are there operations similar to "hot tap" to which the exceptions and criteria set forth in paragraph (a)(2)(ii)(B) could also apply?

(3) Should additional information be provided in the Appendix to assist employers who carry out "hot tap" or similar operations?

The proposed standard focuses primarily on employee exposure to the unexpected release of hazardous energy during the servicing of equipment and machinery in the workplace. As is noted in paragraph (a)(2)(iii)(A) of the proposal, the standard would not cover normal production operations, i.e., operations involving production equipment which is energized and is being used for its intended purpose. However, there are certain servicing operations, such as lubricating and minor adjustments of parts, which do take place during normal production operations. These servicing operations are necessary to enable the equipment to serve its production functions, and must sometimes be performed with the equipment energized. Because the equipment must remain energized during these operations, the proposed standard would not require lockout/tagout procedures to be implemented. However, the Agency recognized that employees engaged in these types of activities might be exposed to hazardous energy, and that even though the procedures for deenergization would not be appropriate, the standard should provide alternative coverage for these situations. Accordingly, paragraph (a)(2)(iii)(B) provides that if it is necessary to perform servicing or maintenance during normal production operations with the equipment energized, such servicing or maintenance shall be performed using alternative measures which the employer can demonstrate will provide effective protection.

The measures required by paragraph (a)(2)(iii)(B) would apply to many situations in which repetitive minor adjustments are required, or in the case of production operations when employees are effectively protected by other means such as specially designed control circuits, control equipment or operating procedures, in which employees have been properly trained. Controls such as inch and jog devices, which limit machine movement when activated, can prevent employee exposure to moving machine parts or components and are considered appropriate devices for the purpose of this provision.

There are many practical applications for these control measures currently in use for production operations. For example, inch and jog devices have been included in the design of machines or equipment used by the printing industry to handle set-up and maintenance problems that deal with straightening or feeding paper through their presses. The textile industry uses them on looms to enable loom fixers and operators to repair "end" (thread) breaks. They are also found extensively on machines such as power presses used by the metal stamping industry, when power is needed during set-up activity to make final adjustments before turning the press over to operating personnel. In all of these examples, the use of specially designed control circuits and control equipment has been combined with good operating procedures to limit effectively employee exposure to the hazards caused by the unanticipated movement of machines or equipment components. Many national consensus standards approved by ANSI support the use of these devices for controlled movement.

Proposed paragraph (a)(2)(iii)(B) will also provide flexibility during normal production operations for the performance of work on energized equipment when servicing or operating activities involving simple tool changes or minor adjustments are necessary. A simple tool change on an automatic chucking machine, for example, might require the operator to replace a worn carbide cutting tool insert in a tool holder when inspection of a finished workpiece indicated the need. The minor adjustment then necessary would be for the operator to reset the tool holder to a position that would result in a dimensionally accurate finished workpiece. The machine operator would need to be in control of the "off-on" switch (circuit control device) and the switch so located that the equipment could not be activated without his knowledge during the tool change. On completion of these activities, the machine would then be restored to the fully automatic mode.

OSHA requests comments and supporting data on the types of servicing or maintenance operations that would be covered by paragraph (a)(2)(iii)(B) as well as details on the types of alternative measures currently available to protect employees who perform these operations. The proposed provision is based on paragraph 6.8 of ANSI standard Z244.1–1982, which reads as follows:

> Production Operations. Personnel performing the activities listed in 3.1, other than normal operating activities should do so under deenergized conditions in accordance with the lockout/tagout procedures required in this standard (see 5.2.1). In the case of required repetitive minor adjustments where it is not feasible, or in the case of normal production operations, these activities shall be accomplished under the protection of specially designed control circuits, control equipment, and operating procedures that provide proven effective protection for the affected personnel.

OSHA believes that paragraphs (a)(2)(ii)(A) and (B), and (a)(2)(iii)(A) and (B) effectively establish the practical limitations involved with applying the proposed standard when tasks must be performed on equipment that remains energized. The Agency is also of the opinion that these provisions

will avoid the need for employers to depend primarily on interpretations of the performance language in paragraph (a)(1)(i) to determine when the proposed standard should apply, and on the need to seek relief from the standard through the use of variance procedures. In this regard, OSHA solicits answers to the following questions:

(1) Are there major categories of exceptions to the proposed rule other than those found in paragraphs (a)(2)(ii) (A) and (B) that OSHA should consider addressing?

(2) Are proposed paragraphs (a)(2)(ii) (A) and (B) and (a)(2)(iii) (A) and (B) drafted with sufficient clarity and specificity to allow for their application in appropriate situations, taking into consideration feasibility, practicality and risk?

(3) In paragraphs (a)(2)(ii)(B) OSHA is proposing use of the same language adopted by ANSI in Z244.1–1982 to describe alternative procedures for hot tap operations.

Is the proposed language in this provision, requiring these procedures to provide *"proven effective protection"* sufficient to ensure adequate control of hazardous energy?

If not, what additional criteria should be established for alternative procedures?

In paragraph (a)(3)(i), OSHA sets forth the purpose of this regulatory action, which is to protect employees from injuries that are the result of unexpected energization, start up, or release of stored energy from machines or equipment when they are engaged in servicing or maintenance activities. Data on injuries and fatalities involving these activities are discussed in other sections of this preamble dealing with the analysis of hazards, accident data and the basis of Agency action.

OSHA is proposing in paragraph (a)(3)(ii) that the control of hazardous energy be accomplished by affixing the appropriate lockout/tagout devices to energy isolating devices and by otherwise disabling equipment according to an established procedure. The steps to be followed by the employer to accomplish this goal are set forth in paragraphs (d)(1) through (d)(5).

In proposed paragraph (a)(3)(iii), OSHA states that the intention of the proposed standard is *not* to replace existing specific OSHA lockout and/or tagout provisions, but to supplement and support these provisions with the requirements of an established procedure. The following listing indicates a number of OSHA standards which currently impose lockout related requirements:

Powered Industrial Trucks

1910.178(q)(5)(i)

Overhead & Gantry Cranes

1910.179(g)(5)(i)
1910.179(g)(5)(ii)
1910.179(g)(5)(iii)
1910.179(1)(2)(i) (b), (c), (d)

Derricks

1910.181(f)(2)(i)(c)
1910.181(f)(2)(i)(d)

Woodworking Machinery

1910.213(a)(10)
1910.213(b)(5)

Mechanical Power Presses

1910.217(b)(8)(i)
1910.217(d)(9)(iv)

Forging Machines

1910.218(a)(3)(iii)
1910.218(a)(3)(iv)
1910.218(d)(2)
1910.218(e)(1)(ii)
1910.218(e)(1)(iii)
1910.218(f)(1)(i), (ii), (iii)
1910.218(f)(2)(i), (ii)
1910.218(g)(2)
1910.218(h)(2)
1910.218(h)(5)
1910.261(i)(1)
1910.218(i)(2)
1910.218(j)(1)

Welding, Cutting & Brazing

1910.252(c)(1)(i)
1910.252(c)(2)(ii)

Pulp, Paper and Paperboard Mills

1910.261(b)(4)
1910.261(f)(6)(i)
1910.261(g)(21)
1910.261(g)(15)(i)
1910.261(g)(19)(iii)
1910.261(j)(4)(iii)
1910.261(j)(5)(iii)
1910.261(k)(2)(ii)

Textiles

1910.262(c)(1)
1910.262(n)(2)
1910.262(p)(1)
1910.262(q)(2)

Bakery Equipment

1910.263(k)(12)(i)
1910.263(l)(3)(iii)(b)
1910.263(l)(8)(iii)

Sawmills

1910.265(c)(12)(v)
1910.265(c)(13)
1910.265(c)(26)(v)

The standards listed above provide limited coverage of machinery, equipment and industries and do not address lockout/tagout issues or methodology in any detail. For example, none of the existing standards cover the need for a procedure or for more than one or two procedural steps pertaining to the actual application or release of energy control measures. The current provisions also do not address the basic requirements contained in the proposal which are needed to support and coordinate the implementation of control measures such as the selection of hardware, communications, periodic inspections, and assignment of responsibility. Additionally, the need to document a procedure, or to train employees engaged in the relevant activities, is not explicitly required by any of the present regulations. A typical example of this limited coverage is found in the following provisions for mechanical power presses:

Section 1910.217(b)(8)(i). A main power disconnect switch capable of being locked only in the off position shall be provided with every press control.

Section 1910.217(d)(9)(iv). The employer shall provide and enforce the use of safety blocks for use whenever dies are being adjusted or repaired in the press.

A general review of these and other lockout and lockout related provisions in OSHA's section 6(a) standards would seem to indicate that the consensus groups which originally developed these standards had either of two primary concerns in mind. Those concerns involve the need (1) to provide equipment with the physical means or capability to isolate energy sources during maintenance and repair activities; or (2) to make a choice of the control measures (locks and/or tags) which were to be provided and used on the specific machine, equipment or process covered by the standard.

The first category of provisions, while requiring the equipment to have the capability of being locked out, does not necessarily require that such control be accomplished. For example, § 1910.213(b)(5) states, "On each machine operated by electric motors, positive means shall be provided for rendering such controls or devices inoperative while repairs or adjustments are being made to the machines they control." As another example, § 1910.218(e)(1)(ii) states, "Air hammers shall have a shutoff valve as required by paragraph (d)(2) of this section and shall be conveniently located and distinctly marked for ease of identification." These provisions are specific in nature as they apply to the machines and equipment regulated and are primarily design oriented. For the most part, they address the importance assigned to the proper installation of equipment with regard to the arrangement of electrical and mechanical components. They do not, however, address the use of these components directly, not do they establish a procedure for assuring that

they are, in fact, used. The proposed standard would supplement these provisions and would not conflict with their requiremets. It is anticipated that the equipment required by this category of current rules would be used as part of the servicing procedures set out in the proposal. For these reasons, OSHA is not proposing any change in provisions in this category as they currrently appear in Part 1910. Provisions of similar content are:

1910.179 (g) (5) (i), (ii), (iii)	1910.213 (a) (10)
1910.217 (b) (8) (i)	1910.218 (a) (3) (iii)
1910.218 (e) (1) (iii)	1910.218 (h) (2)
1910.218 (j) (i)	1910.252 (c) (1) (i)
1910.261 (k) (2) (ii)	1910.262 (c) (1)
1910.263 (1) (8) (iii)	1910.265 (c) (26) (v)

The second category of provisions involves those which mandate the specific use of lockout, tagout or other energy control devices for certain machines, equipment or industries. The category addresses the application of locks, locks or tags, locks and tags, and in some cases the use of blocks, to control potentially hazardous energy.

A typical example of provisions used to specify the use of locks for a control measure is found in § 1910.179(1)(2)(i)(c) which states, "The main or emergency switch shall be open and locked in the open position." Provisions of similar content are:

1910.181 (f)(2) (i) (c)	1910.218 (d)(2)
1910.218 (f) (1) (i)	1910.218 (f) (2) (i)
1910.218 (h) (5)	1910.218 (i) (1)
1910.218 (i) (2)	1910.261 (b) (4)
1910.262 (n) (2)	1910.262 (p) (1)
1910.262 (a) (2)	1910.263 (1) (3) (iii) (b)

A typical example of provisions used to specify the use of locks or tags for the control measure is found in § 1910.261(j)(4)(iii) which states: "When cleaning, inspecting, or other work requires that persons enter the beaters, all control devices shall be locked or tagged out, in accordance with paragraph (b)(4) of this section." Provisions of similar content are:

1910.261(g)(2)	1910.261(g)(19)(iii)
1910.261(j)(5)(iii)	

A typical example of provisions used to specify the use of locks combined with tags is found in § 1910.261(g)(15)(i) which states: "Valves controlling lines leading into a digester shall be locked out and tagged. The keys to the locks shall be in the possession of a person or persons doing the inspecting or making repairs." A provision of similar content is found in § 1910.261(f)(6)(i).

A typical example of provisons used to specify the use of blocks to control hazardous energy is found in § 1910.217(d)(9)(iv) which states: "The employer shall provide and enforce the use of safety locks for use whenever dies are being adjusted or repaired in the press." Provisions of similar content are:

1910.218(a)(3)(iv)	1910.218(f)(1)(iii)
1910.218(f)(2)(ii)	1910.261(b)(4)
1910.265(c)(13)	

The groups of provisions found in this second category, and others similar to them covering potentially hazardous energy, would also not be replaced by the proposed standard. These provisions selectively require the use of the most effective devices for isolating and securing energy sources. The proposal would supplement these provisions in much the same way as with the first category in that it would require the establishment of procedures for energy controls.

In summary, the proposed standard focuses primarily on *procedures*—procedures that are necesssary to provide effective control when dealing with potentially hazardous energy sources. It should also be understood that the proposed standard does not establish definitive criteria requiring selection of a specific control measure—locks, tags, or a combination of the two—to secure energy isolating devices for any particular situation. Where current standards do require the installation and/or use of specific devices, those standards would be supplemented and not replaced by this proposal.

The proposed standard is also intended to interact with any new or revised standards which may be promulgated in the future to address the use of specific control measures on an individual basis. Selection of the specific method of control, at that time, will reflect a thorough evaluation of the extent of exposure to the hazard; the type of injury; and the risk of injury involving that particular machine, equipment, or industry. The present proposal would then provide the procedures to be followed to implement the control as part of the total package including training and education.

In paragraph (b), OSHA is proposing a number of definitions to clarify the meaning, intent and purpose of certain terms contained in the proposed standard. All but five of these definitions are consistent with those published by the American National Standards Institute (ANSI) in their consensus standard, ANSI Z244.1–1982. The five definitions that have been added cover the terms "energized," "setting up," "normal production operations," "hot tap," and "servicing or maintenance." However, except for the definition dealing with energy sources, OSHA believes that all of the proposed definitions are self-explanatory.

The identification of "energy sources," as defined in this proposal, is complicated by three very important considerations: (1) Energy is always present in machinery, equipment or processes; (2) energy is not necessarily dangerous; and (3) danger is only present when energy may be released in quantities or at rates that would harm an employee. Generally speaking, however, potentially hazardous energy sources are defined as those that can cause injury to employees working in, on, or around machines or equipment.

The energy sources identified in paragraph (b)(4) require a more detailed discussion. "Energy," as used in this document means mechanical motion; potential energy due to pressure, gravity, or springs; electrical energy; or thermal energy resulting from high or low temperature. Some energy sources can be turned on and off, some can be dissipated, some can be eliminated, and some can only be controlled. These concepts will be addressed throughout the procedures found in this proposal. The following brief discussion of energy sources may be of benefit to the reader in understanding the provisions of this proposal.

1. Mechanical motion can be linear translation or rotation, or it can produce work which, in turn, produces changes in temperature. This type of energy can be turned off or left on.

2. Potential energy can be due to pressure (above or below atmospheric) as in hydraulic, pneumatic, or vacuum systems, or it can be due to springs or gravity. Potential energy manifested as pressures or in springs can be dissipated or controlled; it cannot be turned off or on.

3. Electrical energy refers to generated electrical power or static electricity. In the case of generated electricity, the electrical power can be turned on or turned off. Static electricity cannot be turned off; it can only be dissipated or controlled.

4. Thermal energy is manifested by high or low temperature. This type of energy is the result of mechanical work, radiation, chemical reaction, or electrical resistance. It cannot be turned off or eliminated; however, it can be dissipated or controlled.

The development and documentation of energy control procedures is of little use unless the employer requires all authorized employees to utilize the procedures that have been provided. To meet these requirements as proposed by paragraph (c)(1), the employer must ensure that hazardous energy control procedures have been implemented for all activities covered by the proposed standard, and are being complied with by the employees. Methods for meeting this requirement are provided in two

other sections of the proposal: Paragraph (c)(4), which addresses periodic inspection for observing employee compliance with the procedures; and paragraph (c)(5), which covers initial and periodic follow up training to develop and maintain the knowledge and skill needed by employees for the safe application and removal of energy controls.

In paragraph (c)(2), OSHA is proposing that employers develop, document and implement procedures for the control of potentially hazardous energy, and that the procedures clearly and specifically outline the steps to be followed, techniques to be applied, and measures to be used by the employer to assure that the procedure is used. OSHA is also proposing that the employer ensure that the control measures are used by employees whenever they might be exposed to injury from the unexpected energization, start up, or release of stored energy involved with machines, equipment or systems.

The written energy control procedure required by this standard need not be complicated or detailed, depending on the complexity of the equipment and the control measures to be implemented. For example, if there is a single machine with a single energy source that must be isolated, and the control measure chosen is simple, such as locking out that energy source during servicing, the written procedure need not be complicated. The steps set forth in the standard can be incorporated into the procedure with very little detail, reflecting the lack of complexity of the control measures. In addition, the employer's procedures need not be unique for a single machine or task, but can apply to a group of similar machines and tasks if a single procedure can address the hazards satisfactorily.

One example offered is in a sample guide to the development of a lockout procedure, as presented in the Appendix. This procedure is not considered unique and can be applied to groups of machines or tasks with considerable flexibility. Used as a guide to develop a specific lockout/tagout procedure, the sample would need only minor changes to methods, procedures and/or text to be acceptable for many workplace situations. Other examples in the Appendix are found in two illustrations which depict the procedural steps involved with the lockout and tagout of electrical energy sources and hydraulic/pneumatic sources.

The proposal also addresses situations in which there is a need for unique lockout/tagout procedures. The Appendix discusses the development of acceptable methods for dealing with situations which might require the entire procedure to be unique for its purpose (one of a kind) in dealing with the hazards, or for those which would only need a supplement to the general procedure. For some applications, the supplement would be in the form of a check list used for gaining access to the equipment or process and for returning it to service. The check list might address the number and locations of the energy isolating devices in order to guarantee total deenergization, and might also identify the employees involved with the use of lockout and/or tagout devices, thus providing accountability. In many cases, the check list would need to reflect the necessary order of energy isolation and device application.

In paragraphs (c)(3) (i) and (ii), OSHA is proposing that protective materials and hardware such as locks, tags, chains, adapter pins, etc., be provided by the employer to secure energy isolating devices. It also proposes that the devices be unique to the particular use (the only ones authorized for the purpose); that they be durable, standardized and substantial; and that they identify the user.

The proposed standard utilizes performance language in imposing the above requirements, but it provides additional guidance in the Appendix, which contains examples of acceptable methods for use in compliance. For example, to meet the requirement in paragraph (c)(3)(i) to supply protective equipment and hardware, the employer can either issue devices to each employee responsible for implementing energy control measures, or can exercise the option of simply having a sufficient quantity of the devices on hand at any given time and assign or distribute them to employees as the need arises.

OSHA believes that the obligations imposed by proposed paragraphs (c)(3) (i) and (ii) are not overly restrictive or complicated. However, the Agency is aware that many questions might be raised concerning the background and rationale for the proposed OSHA standard, as well as for similar requirements adopted by ANSI in their Z244.1–1982 document. For this reason, OSHA has given considerable attention in the Appendix to providing useful information regarding the rationale for, and simple explanations of, the performance language requirements. Comments are solicited on the contents of the Appendix, and on ways in which the contents can be made more effective and easier to use by employers and employees.

In paragraph (c)(3)(iii), OSHA is proposing that the legend (major message) on tagout devices, which are alternately identified as "danger" tags in § 1910.145(f), warn against hazardous conditions if the equipment is re-energized. A note is also provided here which calls attention to the fact that specific provisions concerning such accident prevention tags are found in § 1910.145(f). The reference is made because the latter provisions also address the color, size and message requirements which must be observed for accident prevention tags.

Four legends for major message information are provided in paragraph (c)(3)(iii): *Do Not Start, Do Not Open, Do Not Close,* and *Do Not Energize.* OSHA recognizes, however, that these four messages may not be sufficient to cover all conditions involving hazardous energy control. The Agency solicits comments as to whether more legends should be presented in this standard and, if so, what they should be.

Due to the severity of the risks associated with working on energized equipment, OSHA is proposing in paragraph (c)(4), that periodic inspections be performed by the employer at least annually in order to verify and to ensure compliance with the lockout/tagout provisions. Some acceptable methods for meeting the performance requirements in this paragraph are identified in the Appendix. One method includes using random audit and planned visual observation to determine the extent of employee compliance. Another includes modifying and adopting ordinary plant safety tours to suit this purpose.

It is also proposed that the inspections be made by an authorized employee other than the one implementing the energy control procedure; that they be designed to correct any deviations uncovered; and that the employer certify that they have been performed. Here too, the Appendix suggests methods that could be used in meeting these requirements, such as random audits and visual observation of the workplace while shutdown and isolation of the equipment is in process. These inspections are to provide for immediate feedback and action by the employer to correct any inadequacies observed.

OSHA believes that periodic inspections by the employer are necessary to ensure compliance with the procedure. In that regard OSHA solicits answers to the following questions:

1. Some operations may require a more frequent periodic inspection based on problem areas and changes to methods and procedures. Would the proposed schedule provide adequate protection?

2. What factors should OSHA use in evaluating an employer's inspection program?

3. Are methods other than periodic inspection available to the employer to ensure compliance with the procedures?

In paragraph (c)(5), OSHA is proposing that the employer provide effective initial training, periodic retraining, and certification of such training of employees. OSHA considers these requirements to be of critical importance in helping to ensure that the applicable provisions of the hazardous energy control procedure(s) are known, understood and strictly adhered to by employees. Paragraphs (c)(5)(i) (A), (B), and (C) of the proposed standard establish the amount of training that is required for three groups of employees: "authorized" employees, "affected" employees, and "all other" employees. The relative degree of knowledge required by these three employee groups is in a descending order, with the requirements for authorized employees demanding the most effort in training. Because authorized employees are charged with the responsibility for implementing energy control procedures, it is important that they receive training in recognizing and understanding all potentially hazardous energy sources that they might be exposed to during their work assignments, and that they also be trained in the use of adequate methods and means for the control of such energy sources.

The training requirements OSHA is proposing for "affected employees" are less stringent than those for authorized employees. Affected employees are not required to implement energy control procedures themselves, but they do perform activities such as those identified in the proposed paragraph (a)(2)(i) where energy control procedures are necessary. For these reasons, OSHA is proposing that affected employees be instructed in the use of hazardous energy control (lockout/tagout) procedures, and that the instruction provide a clear understanding of the purpose and use of lockout/tagout procedures. The instructions need to be sufficient to enable the employees to determine if a control measure is needed. They should also make employees aware of those conditions and situations where their actions in disregarding or violating the procedures could endanger their own lives, or the lives of co-workers. Considerable latitude is given to employers to meet the training requirements for both authorized and affected employees. The options include classroom or on-the-job training or a combination of the two.

OSHA is also proposing in paragraph (c)(5)(i)(C) that all other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations. This instruction as to the employer's lockout/tagout procedure can be conveyed during new employee orientation sessions, by the use of employee handbooks, or through regularly scheduled safety meetings.

OSHA seeks public comment on the question of whether this latter requirement covers too broad a range of employees, and whether the same purpose and protection could be afforded by limiting the training and informational requirements to authorized and affected employees. OSHA also solicits comment on whether the subjects in which the various employee groups must be trained are specific enough for safe energy control practices.

In paragraph (c)(5)(ii), OSHA is proposing that periodic retraining be provided for both authorized and affected employees whenever an inspection under paragraph (c)(4) reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure.

OSHA is of the opinion that full and uniform utilization of an energy control procedure is necessary in order for that procedure to maintain its effectiveness. Every effort should be made during the periodic inspection performed under paragraph (c)(4) to determine whether or not the procedure is being used properly. If deviations are observed, retraining in accordance with this paragraph ((c)(5)(ii)) would be required. However, retraining could be triggered by events separate from the findings of a periodic inspection. For example, an employee working with an energy control procedure might be injured in the course of his duties. If a subsequent investigation indicated that the employee failed to operate within the guidelines of his control procedure, retraining would be required.

In addition, the investigation might also reveal that the procedure itself was not adequate. Such inadequacies in the procedure could be the result of using a general procedure that does not handle effectively a specific application, or they may arise because changes have been made to the equipment or process that did not take the existing energy control procedure into consideration. In such cases when changes to the energy control procedure must be made, the employer would be required to retrain employees in the new or revised procedures in accordance with paragraph (c)(5)(ii).

The employer's certification of training that OSHA is proposing to require in paragraph (c)(5)(iii) is intended to provide recognition of two elements: First, that initial training has been given to employees; and second, that retraining has been provided in order to reinforce the employee's original training and to take into consideration any changes in procedures, equipment, or other elements that may have occurred since training was last given.

In paragraph (c)(6), OSHA is proposing that energy isolating devices used for the control of potentially hazardous energy sources, including valves, be marked or labeled to identify the equipment supplied and the energy type and magnitude, unless they are positioned and arranged so that these elements are evident, and that the devices only be operated by authorized employees. Employees working with energy control procedures need adequate information about the hazards of the equipment that they are servicing, and they must be certain that the equipment they are working on is the same equipment that was intended to be disabled. They should feel confident that they have secured the correct energy control devices and are protected from the hazards of inadvertently working on energized equipment.

The identification requirement of paragraph (c)(6)(i) would apply to all energy isolating devices, including devices which control hydraulic, pneumatic, steam, and similar energy sources by the use of valves or similar devices to isolate and block energy flow. It would also apply to the valves used in pipeline network process operations, such as those found in petroleum and chemical operations. As noted above, however, the proposed identification requirement would not apply in any case, if the devices were to be located and arranged so that the equipment supplied and the energy type and magnitude were evident. For example, a wall mounted electrical disconnect switch of a type known to carry 120–440 volt service that is observed to have one lead to a single machine, would not require the disconnect switch to be marked or labeled. Similarly, a valve located so that it obviously can only service a specific machine and can be visually traced to a main line source that identifies the type and magnitude of

energy would not require marking or labeling.

To cover the identification process, OSHA is proposing the use of two separate and distinct methods. For machines, equipment or systems, the employer would be required to label or mark the energy isolating devices in a permanent manner. The employer may elect to do so in a plant-wide effort for all machines or equipment that will, at one time or another, need to be identified. As an alternative, the employer could mark or label the devices permanently on an individual basis, for a specific machine or equipment, at the time the lockout/tagout procedures are to be applied and the energy isolating devices are to be secured.

For pipeline network process operations, permanent labeling or marking of the energy isolating devices (valves) would not be required. Among other problems, these pipelines may carry changing product mixes or employ alternate product travel routes, which makes it difficult, if not impossible, to label or mark the control valves in a permanent manner. Therefore, for these operations only, the proposal would allow the employer to identify all energy isolating valves involved with the task on a job-to-job basis prior to performing the necessary work.

Regarding the provision proposed in paragraph (c)(6)(i), OSHA solicits answers to the following:

1. OSHA is considering whether the identification should include information on the magnitude of energy to be controlled by the energy isolating devices. What problems might be encountered with such a requirement?

2. What changes could be made in the proposal to address these problems?

In paragraph (c)(6)(ii), OSHA proposes that the energy isolating devices be operated only by authorized employees or under the direct supervision of authorized employees. Special skills are required to effect the control of potentially hazardous energy using lockout/tagout procedures. These skills, described in paragraph (c)(5)(i) of this proposal, involve such elements as the knowledge of multiple forms of energy, the hazards of high voltages and pressures, and the relationship of energy to complex interconnected components. In light of these facts, OSHA believes that energy isolating devices must only be operated by authorized employees or under the direct supervison of authorized employees.

In paragraph (c)(7), OSHA is proposing that whenever lockout/tagout control might directly affect another employee's work activities, an authorized employee must notify the affected employee before taking any action to apply or to remove lockout and/or tagout controls.

OSHA believes that these measures are important to ensure that employees do not unknowingly attempt to energize machines or equipment that have been taken out of service and de-energized for the performance of activities covered by this standard. The lack of information regarding the status of the equipment could endanger both the servicing employees and the employees attempting to operate the equipment. The notification is also needed after servicing is completed to assure that employees know when the control measures have been removed. Without such information, employees could mistakenly believe that a system is still de-energized and that it is safe to continue working on it.

Some acceptable methods of notification are explained in paragraph seven of the Appendix. They include discussion with the affected employees by an authorized employee to inform and caution them of the impending actions, and may also involve the use of written work permit and authorization systems and/or clearance procedures that document the employer's work practices for gaining access to equipment or processes and for applying and removing controls. The Appendix contains additional information dealing with the application and removal of controls under specific conditions, and provides various methods of meeting the control requirements of the standard. (In particular, see sections of the Appendix with the following headings: *Procedure*; *Testing or positioning of energized equipment*; *Group lockout/tagout*; and *Shift or personnel change*.)

OSHA is proposing in paragraph (d) that five separate and distinct steps be followed in meeting the procedural requirements of paragraph (c)(1) (Procedure) and the application of energy control (lockout/tagout) measures. It is also proposing that the actions be taken in the sequence presented. For example, paragraph (d)(1) proposes, as the first step, that the equipment or process be turned off or shut down by an authorized employee according to established procedures. This is the starting point for all subsequent action that is necessary to put the equipment or process in a state that will permit employees to work on it safely.

In many operations, activation of an electrical push-button control or the movement of a simple throw switch (electrical, hydraulic, or pneumatic) to the "stop" or "off" mode is sufficient to meet this provision. In other cases, however, such as those found typically in a refining or chemical process, there are control devices that do not necessarily address an "off-on" or "start-stop" condition (i.e., level controls, pressure controllers, etc.). In these instances, a series of predetermined steps may be necessary to achieve a shutdown of the process or equipment.

Following shutdown of the equipment or process as outlined in paragraph (d)(1), OSHA is proposing in paragraph (d)(2), as the next step of the procedure, that energy isolation devices be physically located and operated in such a manner as to isolate the equipment or process from the energy source(s). For example, in the simple case of an electrical push-button control which has been activated to stop the movement of machine or equipment parts as the first step of the shutdown procedure, isolation can then be accomplished by ensuring that the push-button circuitry cannot be supplied with additional electrical energy. For such equipment, the isolation requirement can be met by the employer's actions in locating the main power disconnect switch and moving the control lever to the "safe," "off," or "open" position. Performing these actions will prevent the reintroduction of energy to the push-button circuitry and will isolate the operating control from the energy source.

In paragraph nine of the Appendix, OSHA has identified the types of energy needing isolation, and has provided some acceptable measures to be taken for accomplishing such isolation. These measures cover mechanical energy involving rotation, translation, or a combination thereof; thermal energy; potential energy involving pressure, gravity and springs; and electrical energy. The Appendix also discusses the relationship between the five steps set out in paragraph (d) and the specific energy isolation requirements in paragraphs (c)(2) *Procedure*, and (c)(6) *Energy isolating devices*, of the standard, and provides explanations and additional information which can be used for guidance in complying with these paragraphs.

As the third step in the procedure, OSHA is proposing in paragraph (d)(3) that action be taken to secure the energy isolating devices in a "safe" or "off" position. This paragraph would require that appropriate and effective lockout and/or tagout devices be affixed to each energy isolating device by an authorized employee, and that they be attached so

as to prevent reactivation of the machine or equipment.

This proposed standard for the control of hazardous energy sources is a "generic" standard, and is written largely in terms of the procedures and performance to be achieved. OSHA does not consider it practical to prescribe specific definitive criteria for each possible use of energy control measures in such a wide ranging standard. However, the Agency believes that the proposal will enable the user to make a choice of the most effective control measure involving the use of locks or tags, or a combination of the two devices for securing an energy isolating device. For this reason the term "appropriate and effective lockout/tagout devices" is used in this provision rather than attempting to identify a specific type of device when describing the action that is to take place.

The main thrust of the proposal is to mandate the development, documentation and implementation of control procedures, and this would be accomplished as outlined in paragraph (c)(2) of the proposal. The employer would be given considerable flexibility in developing a control program, and such a program would be evaluated by OSHA compliance officers to determine whether it meets all the criteria in this standard. OSHA intends to address the need for specific lockout/tagout requirement for particular types of equipment or processes on an individual basis, as appropriate, in future rulemakings. This will involve revision of existing standards and promulgation of new ones, as necessary. (Examples of current provisions in the OSHA standards which contain specific lockout/tagout requirements can be found in the previous discussion of proposed paragraph (a)(3)(iii)).

Where no specific standard presently requires the use of a lock versus a tag or a combination of the two for securing an energy isolating device, paragraph (d)(3) of the proposal requires the employer to select an appropriate and effective method. Information is provided in the Appendix to assist the employer in this selection process. Even though options and rationable are presented for consideration in the Appendix, the Appendix does not provide definitive criteria to prescribe any one of the described forms of control. It is meant to show how factors such as the degree of hazard exposure, employee training, conditions in the workplace and the commitment of employees and employees in an industry to a proven effective method and procedure can be used to influence the choice of a control method. Nevertheless, it should be noted that much of the guideline information presented in the Appendix has been developed from national consensus standards and other materials which have been widely recognized and accepted throughout industry. Many of the requirements for using a lock and tag, for example, can be found in the National Fire Protection Association, NFPA 70-E Standard—Part II, "Safety Related Work Practices" (Exhibit 2). As noted earlier, that NFPA standard is also a major source document for the electrical safety work practices proposal which is currently being developed by OSHA. The guideline information is also supported by numerous technical data sheets published by the National Safety Council and by the many references contained in the Council's "Accident Prevention Manual."

OSHA is of the opinion that, as a general rule, where it is feasible, the physical protection offered by the use of a lock, when supported by the information provided on a tag used in conjunction with the lock, provides the greatest assurance of employee protection from the release of hazardous energy.

OSHA proposes in paragraph (d)(4) that the next step taken in the application of energy control (lockout/tagout) procedures would be to determine the presence of, and relieve, disconnect and/or restrain all potentially hazardous, stored or residual energy in the machine or equipment. Up to this point, the purpose of following all the steps of the procedure has been to enable the employee to isolate and block the source of energy feeding the machine or equipment to be worked on, at a point beyond which it can not be bypassed. However, energy can very easily be trapped in a system downstream from an energy isolating device or can be present in the form of potential energy from gravity or from spring action. Stored or residual energy of this sort cannot be turned on or off; it must be dissipated or controlled.

When energy may be present in a system that has been isolated, the proposed paragraph would require those hazards to be controlled before an employee attempts to perform any work covered by the scope of the standard. The provision might require, for example, the use of blocks or other physical restraints to immobilize the machine or equipment where necessary for control of the hazard. In the case of electrical circuits, grounding might be necessary to discharge hazardous energy. Hydraulic or pneumatic systems might necessitate the use of bleed valves to relieve the pressure. Additional information is given in the Appendix which provides a listing of the forms of energy which might be stored in sufficient quantities to represent hazards. It also provides examples of the methods used to control these hazards.

In paragraph (d)(5), OSHA is proposing that as the fifth step in the application of energy control procedures, prior to starting work on equipment or processes, an authorized employee must ensure that the previous steps taken have isolated the energy effectively. The authorized employee would need to verify that the machine or equipment has been turned off or shut down properly as required by paragraph (d)(1) of this proposal; that all energy isolating devices were identified, located and operated as required by paragraph (d)(2); that the lockout and/or tagout devices to energy isolating devices have been attached as required by paragraph (d)(3); and that stored energy has been rendered safe as required by paragraph (d)(4).

The proposed Appendix describes actions which the authorized person can take in order to meet this requirement. These actions, which may need to be taken singly or in combination, involve either an attempt to operate the equipment or process controls, or the use of appropriate test equipment and the performance of a visual inspection to verify energy isolation.

This step of the procedure may involve a deliberate attempt to start up equipment which should not be capable of activation because of the application of control procedures. It is an action intended to assure the employee that energy from the main power source has been effectively isolated and blocked and that injury could not result from inadvertent activation of the operating controls. Another means of testing the equipment or process is by the use of appropriate test instrumentation. This method would be appropriate for use in cases involving electrical circuits and equipment, for example, where verification of isolation could be accomplished by determining the relative energy level readings involved by using a volt meter. Similar test equipment can be applied to other energy types and sources.

OSHA also considers the use of visual inspection procedures to be of critical importance throughout the lockout/tagout control procedures. Visual inspection can confirm that switches, valves, breakers, etc. have been properly moved to and secured in the "off" or "safe" position. Observing the

position of the electrical main power disconnect switch can, for example, confirm that the switch is either in the "off" (open) or "on" (closed) position. Visual inspection can also verify whether or not locks and other protective devices have been applied to the control points in a manner that would impede the unsafe movement of the switches or valves. Finally, a visual inspection can be used to verify that isolation has taken place by determining that all motion has stopped and that all coasting parts such as flywheels, grinding wheels, saw blades, etc., have come to rest.

OSHA is proposing in paragraph (e) that certain actions be taken by authorized employees before lockout/tagout devices are removed from energy isolating devices. These actions would ensure: (1) That the equipment or process has been returned to an effective operating condition; (2) that any employees who might be exposed to injury during the process of restoring energy are made aware that such process is to begin; and (3) that those employees having the responsibility for removal of the devices have been identified together with the specific conditions necessary for the procedures to take place.

In paragraph (e)(1), it is proposed that the workplace area around the equipment or process be inspected to ensure that nonessential items have been removed and that equipment components are operationally intact. OSHA further explains this provision in the Appendix to show how it can involve such things as tools, materials, mechanical restraints, replacing guards and checking for completeness of the work that was performed in returning the system to its operational mode. It also explains the conditions under which a visual inspection alone can accomplish this goal, and discusses those conditions which may involve the need for additional measures such as check lists and other administrative procedures.

In paragraph (e)(2), OSHA is proposing that the work area be checked to be sure that employees are clear of the equipment or process before energy is restored to it. In this case also, OSHA discusses in the Appendix the acceptability of a visual inspection to accomplish the purpose under certain conditions and the use of administrative procedures, such as check lists, under other conditions.

It cannot be overemphasized that employees performing tasks on de-energized equipment may be exposed to hazards involving serious injury or death if the status of lockout/tagout control conditions can be changed without their knowledge. For this reason, OSHA is proposing in paragraph (e)(3) that as a general rule, lockout/tagout devices be removed by the employees who applied them. An exception is provided for two types of situations in which the device may be removed under the direction of an authorized employee using specific procedures. Paragraph (e)(3)(i), as proposed, permits use of the exception when the employee who applied the lockout/tagout device is not available to remove it. This provision is intended to cover situations such as those that might arise from the sudden sickness or injury of an employee, key loss, or other emergy conditions. The proposed paragraph (e)(3)(ii) will permit use of the exception for unique operating activities involving complex systems, where the employer can demonstrate that it is not feasible to have the device removed by the employee applying it. For example, the provision can be used to provide flexibility in operatios similar to that where the removal of a lockout/tagout device at a remote electrial transmission or distribution system location is required and the process is controlled by a written procedure that uses an authorized employee operating from a central control point to communicate instructions to employees working in the field.

OSHA is proposing in paragraph (f)(1) that a procedure be developed and implemented that would establish a sequence of actions to be taken in situations where energy isolating devices are locked and/or tagged and there is a need for testing or positioning of the equipment. This action is required in order to maintain the integrity of any lockout/tagout procedure. It is also necessary in order to provide optimum safety coverage for employees when they have to go from a de-energized condition to an energized one and then return the system to lockout/tagout control. It is during these transitions that employee exposure to hazards is high, and a sequence of steps to accomplish the task safely is needed.

Paragraph (f)(1) prescribes a logical sequence of steps to be followed in situations where energy isolating devices are locked and/or tagged out, and there is a need to test or position the equipment or process. The steps will offer necessary protection to employees when they are involved in this activity. The procedure is clear-cut and should require no explanation other than is found in the standard itself and in the supporting Appendix material.

In paragraphs (f)(2) (i) and (ii), OSHA is proposing that whenever outside servicing organizations are engaged at a plant or facility to perform any of the activities covered by the scope and application of the proposed standard, the employer at that facility must inform the authorized representatives of the servicing organizations (contractors, service representatives etc.) of the lockout/tagout procedures used by the facility. It is also proposed that employers verify that the procedures to be used by outside service representatives are compatible with existing in-plant procedures.

These provisions are necessary when outside personnel work on machines or equipment because their activities have the potential for creating hazards which are not present for the regular plant or facility employees under normal operating conditions. The proposal is intended to ensure that both the employer and the outside service personnel are aware that their interaction can be a possible source of injury to employees and the outside personnel, and that close coordination of their activities is needed in order to reduce the likelihood of such injury. OSHA sees the proper utilization of these provisions, when they are understood and agreed upon, as a way to prevent misunderstandings by either plant employees or service personnel regarding use of the lockout/tagout procedures in general, and with regard to the use of specific lockout or tagout devices that are selected for a particular application.

Paragraph 16 of the Appendix notes that presentation of a copy of the facility lockout/tagout procedures by the facility employer to an authorized representative of a service organization would meet the requirement in paragraph (f)(2)(i) that the service organization be informed of such procedures. Relative to paragraph (f)(2)(ii), the Appendix discusses ways for the employer to verify that the lockout procedures used by the outside service organization will be compatible with the existing in-plant procedures. OSHA requests comments as to whether the Agency should require either a written record or a certification to ensure that such verification has taken place. If so, what details, if any, should be included?

OSHA is proposing in paragraph (f)(3) that when a crew, craft, department or other *group* lockout or tagout device is used, it must provide the affected employees with a degree of protection that is equivalent to the use of *personal* lockout/tagout devices. As is the case with other forms of lockout/tagout protection, the employer who uses a

group lockout or tagout system must develop a procedure which encompasses the elements set forth in performance language in proposed paragraph (c)(2). Paragraph (f)(3), as proposed, is intended by OSHA to identify specifically and require several key provisions which must be included in all group lockout or tagout procedures, and which would require the involvement of authorized persons. One authorized person would be assigned the primary responsibility for all employees working under the protection of a particular lockout/tagout device. When more than one group is involved, another authorized person might be needed to maintain responsibility for coordination of the various lockout control groups in order to ensure continuity of protection and to coordinate workforces.

In addition to designating and assigning responsibility to authorized employees, the proposed paragraph would require the employer to develop and implement procedures for determining the exposure status of individual crew members and for taking appropriate measures to control or limit that exposure. These provisions are seen by OSHA as requiring at least the following steps:

1. Verification of shutdown and isolation of the equipment or process before allowing a crew member to place a personal lock or tag on a lockout box, board, or cabinet;

2. Ensuring that all employees in the crew have completed their assignments, removed their lockout and/or tagout devices from the box lid or other device used, and are in the clear before turning the equipment or process over to the operating personnel—completing this step might include the use of check lists or other procedures, if necessary, to account for the number of employees, energy isolating devices and lockout or tagout devices that are involved; and

3. Providing the necessary coordinating procedures for ensuring the safe transfer of lockout or tagout control devices between other groups and work shifts.

The special coverage proposed by paragragh (f)(3) recognizes the importance of group lockout and/or tagout devices used under conditions in which the safety of all employees working in the group is dependent on how those devices are used and coordinated by the authorized person. For that reason, it involves a closer examination of the conditions, methods and procedures needed for effective employee protection. Many special procedural considerations for group lockout/tagout application are discussed throughout the Appendix, including the paragraphs on *Procedures* (paragraph 2), *Release from control* (paragraphs 13, 14, & 15) and *Shift or personnel change* (paragraph 18). OSHA solicits comment on whether or not group lockout/tagout requirements are adequately addressed in this or other paragraphs of the proposal. If they are not, what changes should be made in order to assure employee protection?

OSHA is proposing in paragraph (f)(4) that specific procedures be implemented to ensure continuation of lockout/tagout protection for employees during shift or personnel changes in order to provide for an orderly transfer of control measures, and to be certain that the equipment or process is maintained in a safe condition for continued work following this transition. As with group lockout/tagout, this task is accomplished as part of the procedures that are defined in performance language in proposed paragraph (c)(2). Proposed paragraph (f)(4) identifies several key provisions that must be included in procedures whenever transfer of control measures is necessary. The underlying rationale for these provisions, whereby hazardous energy control responsibility is transferred, is for the maintenance of uninterrupted protection for the employees involved. It is therefore considered essential that lockout/tagout devices be maintained on energy isolating devices throughout the transition period.

Basically, the transfer of responsibility will require the on-coming shift employees to accept responsibility for the safety and control of the system involved prior to the release of responsibility by the off-going employees. Also, the procedures, whether they necessitate the use of simple control measures or the more detailed use of logs and check lists to accomplish an orderly transfer, are to be followed by an assurance that the system is indeed safe for employees to continue working. This assurance involves action by the authorized or supervisory employee responsible for the transfer to verify the continued isolation of energy in the system.

Regarding the issue of shift change-over and transfer of responsibility for energy control and isolation of a system, OSHA solicits comment on whether the proposal adequately addresses the criteria necessary for maintaining employee protection. If it is not adequate, what additional provisions are necessary? Should the standard be more specific in establishing responsibility for the transfer of authority for energy isolation?

VI. Regulatory Impact Analysis

Introduction

Executive Order 12291 (46 FR 13193, February 17, 1981) requires OSHA to conduct a regulatory analysis for any rule potentially having major economic consequences on the national economy, geographical regions, individual industries, or levels of government. Consistent with these requirements, the Occupational Safety and Health Administration (OSHA) has prepared a Preliminary Regulatory Impact Analysis (PRIA) [Ex. 17] for the proposed rule. This analysis includes: A profile of the potentially affected firms and employees; a description of regulatory and nonregulatory alternatives; an analysis of the technological feasibility of the proposed rule; and a study of the potential social benefits, economic costs, and environmental impacts that may result from full compliance with the proposed rule.

The complete analysis, as summarized in this section, is based on data and information provided by the Eastern Research Group (ERG) in a study entitled, "Industry Profile Study of a Standard for Control of Hazardous Energy Sources Including Lockout/Tagout Procedures" [Ex. 15]. Additional information was obtained from comments submitted to OSHA in response to the preproposal draft [Ex. 10] and supplemental ERG report [Ex. 21]. The complete OSHA PRIA, the ERG report, and all comments submitted to the Docket are available for inspection and copying at the OSHA Docket Office, Room N-3670, 200 Constitution Avenue NW., Washington, DC 20210.

Covered Industries

The proposed rule will affect most employment covered by OSHA under Part 1910 except: (1) Those activities that are specifically excluded from coverage such as certain work on plug and cord type electrical equipment; and (2) those firms for which OSHA has or is in the process of providing equivalent coverage under a different subpart or part, such as the oil and gas extraction industry. OSHA has estimated that the proposed rule will affect activities in some 1.6 million establishments employing approximately 39 million workers.

To analyze the differing effects of the proposed rule, OSHA has divided the affected industries into a high-impact group, a low-impact group, and a zero or negligible-impact group. The high-impact group consists of all manufacturing industries. In 1984, approximately 20

million workers were employed in 341,000 high-impacted establishments.

Firms classified as low-impact include those in transportation; utilities; wholesale trade; retain food stores; and several service industries, including personal services, business services, automotive repair, miscellaneous repair, and amusement services. OSHA has estimated that approximately 19 million workers were employed in 1.4 million low-impact establishments in 1984.

The negligible-impact group consists of industries that ERG determined had little potential for a lockout/tagout-related accident. Retail trade, finance, insurance, real estate, service, and public administration firms not classified in the high- or low-impact sectors were included in this group.

The Agency's analysis focuses on the potential regulatory efforts to high- and low-impact firms.

Population at Risk

As noted, some 39 million workers are employed in industries that may be affected by the proposed rule. All such workers have the potential for being injured due to inadequate or non-existence use of lockout/tagout. In estimating the number of workers at risk from exposure to hazardous energy, OSHA classified "at-risk" occupations as those being held by individuals who would actually perform lockout/tagout activities under the proposed rule. Although this approach tends to underestimate the number of workers who could benefit from promulgation of a lockout/tagout rule, it does provide a good measure of the number of workers who will have to alter their work patterns to comply with the proposed rule. Thus, it is an appropriate method for estimating the costs of the rule. Based on the ERG study [Ex. 15, p. 3–35], OSHA has estimated that two million workers in high-impact industries, and one million workers in low-impact industries, are employed in occupations where the unexpected energization, start-up or release of stored energy of machines or equipment could cause injury to employees. The risk appears to be the greatest for those workers employed as craft workers, machine operators, and laborers. Certain types of machinery, such as packaging and wrapping equipment, along with printing presses and conveyors, are associated with a high proportion of the accidents.

Significance of Risk

The installation, assembly, service, repair, change over, and disassembly of machines, equipment, and systems are activities integral to most industrial processes. During these activities, however, accidents often result from the inadvertent energization or movement of machinery or equipment.

The ERG study [Ex. 15, p. 6–27, 6–48] estimated that two percent of all workplace injuries, and 7.1 percent of all fatal occupational accidents, occur as a result of inadequate or nonexistent lockout/tagout procedures in industries likely to be regulated under the proposed rule. Based on these percentages, the Agency has estimated that in 1984 there were 144 fatalities, 33,432 lost workday injuries, and 37,561 non-lost workday injuries that occurred due to inadequate lockout/tagout procedures in the affected industries. Assuming that these types of accidents grow proportionately with the average level of employment, approximately 1,530 fatalities, 352,965 lost workday injuries, and 396,560 non-lost workday injuries would occur during the next 10 years in the absence of a lockout/tagout standard.

OSHA seeks comment on the methodologies applied to the various data sources to estimate the percentages of workplace injuries due to inadequate or nonexistent lockout/tagout procedures. OSHA also seeks comment on the reliability of the different estimates.

The accidents commonly resulting from inadequate or nonexistent lockout/tagout activities tend to be significantly more severe than the average occupational injury. Injuries typically include fractures, lacerations, contusions, amputations, and puncture wounds. The ERG study [Ex. 15, p. 6–52] estimated that such injuries cause workers to lose an average of 24 workdays. By way of comparison, the 1981 Bureau of Labor Statistics' Occupational Injuries and Illnesses Study [Ex. 18] reports that the average lost time occupational injury involves 16 lost workdays.

Based upon the aforementioned evidence, OSHA has determined that the failure to control sources of hazardous energy results in a significant risk to employees. Since the private market fails to provide an adequate level of safety for workers servicing and maintaining equipment, the Agency has examined various regulatory and nonregulatory alternatives, including tort litigation, distribution of information, workers' compensation, and industry self-regulation. The Agency has concluded that the proposed standard would reduce risk in an optimal manner.

Technological Feasibility

The proposed rule is written in performance-based language that permits firms to develop lockout/tagout procedures that are most appropriate for their specific equipment and machinery. Based on data gathered during ERG site visits, OSHA has determined that some firms of all sizes and types are already in full compliance with the proposed rule. As the proposed rule would not require the development of new technologies, OSHA has determined that all provisions of the proposed standard are technologically feasible.

Potential Benefits of the Proposed Rule

OSHA has estimated the total number of accidents that the proposed rule would have prevented in 1984, assuming full compliance by all affected firms and workers. As a conservative estimate, the Agency assumed that only 85 percent of those accidents identified as caused by inadequate or nonexistent lockout/tagout procedures would actually be prevented under the proposed rule. It was assumed that 15 percent of the noted accidents may still occur even if both employees and employers are complying fully with the rule (e.g., a block used to hold the weight of a suspended machine component may fail). Based on the above assumptions, OSHA has estimated that the proposed rule would have prevented approximately 122 fatalities, 28,400 lost workday injuries, and 31,900 non-lost workday injuries in 1984.

OSHA does not endorse any particular estimate for the value of an employee's life. For illustrative purposes, however, OSHA has used a willingness-to-pay method to estimate the monetary value of the employee benefits that would result from implementation of the proposed rule. Willingness to pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program, or in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. To the extent that benefits can be monetized using a willingness-to-pay methodology, the Agency's best estimate for the total worker benefit of the proposed rule is $1.5 billion [Ex. 17, p. V–13].

In addition to saving lives and reducing injuries, the proposed rule would also reduce employers' accident costs such as for lost production time, administrative time spent preparing insurance claims and accident reports, and reduced efficiency related to replacing injured workers. To estimate the magnitude of these employer benefits, OSHA examined several academic and industry studies. Based

primarily on studies by the Alcoa Corporation [Ex. 19] and by Levitt and Coworkers [Ex. 20], OSHA has estimated that the reduction in occupational accidents would result in an annual benefit to employers of $125 million. This figure is based on an estimated cost-savings of $350 per nonlost workday injury and $4,000 per fatality and lost workday injury. As this report is a *Preliminary* Regulatory Impact Analysis, OSHA invites public comment on these estimates for incorporation into the final RIA that will accompany the final rule.

Therefore, to the extent that the benefits of an occupational safety rule can be monetized, OSHA has concluded that promulgation of the proposed rule would create a benefit to employers and employees equal to approximately $1.5 billion annually.

Potential Costs of the Proposed Rule

The Agency estimates that promulgation of the proposed rule would cost 1.6 million establishments a total of $212 million during the first year of implementation, and $135 million in subsequent years [Ex. 17, p. VI–41]. If the costs for equipment modifications are annualized over a 10-year period, the first-year costs would be $190 million and the recurring costs would be $140 million [Ex. 17, p. VI–42]. These estimates were calculated using 1984 procedural practices as a baseline and then assuming full compliance with the proposal. All estimates were calculated in 1984 dollars based on the most cost-effective methods of implementing the proposed rule.

The nonannualized costs of the proposal can be briefly summarized by category. For tags, locks, and other hardware, the first-year costs would be $10.8 million and the annual recurring costs would amount to $7.9 million [Ex. 17, p. VI–41]. For equipment modifications, the first-year costs are estimated at $26.9 million, with no annual recurring costs [Ex. 17, p. VI–13]. In terms of work practice modifications, the first-year costs and the annual recurring costs would be $102.7 million each [Ex. 17, p. VI–20, VI–22]. For planning and implementing lockout-tagout procedures, the first-year costs are calculated to be $51.5 million and the annual recurring costs are estimated to be $12.8 million [Ex. 17, p. VI–37]. In terms of employee training, the first-year costs would be $20.1 million and the annual recurring costs would be $11.7 million [Ex. 17, p. VI–40].

It should further be noted that in determining the economic impact of the proposal, OSHA estimated that the average additional time needed to perform lockout/tagout is 2 minutes. This estimate was based on the results of a 1981 BLS study (Ex. 3), which surveyed maintenance workers on lockout/ tagout procedures. As noted in the PRIA, OSHA's contractor, Eastern Research Group (RG), conducted its own mail survey and estimated that the average additional time for performing lockout/tagout would be 4 minutes (Ex. 17, p. VI–15). OSHA does not believe that the ERG survey provided a representative sample on which to make this estimate, and considers the BLS survey of maintenance workers to provide a more accurate figure. OSHA solicits comments and data on the amount of time necessary to perform the full lockout/tagout procedure in the proposal.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), OSHA must assess the potential economic impact of the proposal to determine the rule would impose significant costs upon a substantial number of small entities. "Significance" is determined by the impact upon small firms' profits, market share, and financial viability. In particular, OSHA must determine whether the proposal will have a relatively greater negative effect on small entities than on large entities.

To assess the impact of the proposed rule on small entities, the Agency has estimated the total cost of compliance per establishment for firms not currently practicing lockout/tagout. First-year costs would range from $133 for very small firms (those employing fewer than 20 workers); to $1,778 for small firms (those employing 20 to 99 workers); to $30,227 for large firms (those employing 250 workers or more) [Ex. 17, p. VI–43]. The costs of complying with the proposed rule would depend primarily on the number of workers employed at a firm and the number of maintenance and servicing tasks required annually—factors that typically depend upon the scale of operation of an entity. Thus, based on the above estimates, the costs of the proposal would be proportional to the size of the firm and no significant differential impact is expected.

OSHA also has compared the costs of compliance with small entities' overall total costs of production. The Agency has determined that the cost of full compliance with the proposal would equal no more than 0.05 percent of an average small or very small firm's operating costs, and no more than 2.2 percent of an average small firm's net income [Ex. 17, p. VII–6].

As the costs of compliance for small and very small firms are proportional to the size of the firm, and would represent such a small component of the overall cost of the facilities, OSHA certifies that the proposed rule would not have a significant impact upon a substantial number of small entities.

VIII. International Trade

Increases in the price of domestically manufactured goods in general result in an increase in the demand for imports, and a decrease in the demand for exports. The magnitude of this impact depends on the relevant demand elasticities and the magnitude of the price changes. While the proposed standard may result in slightly higher prices of manufactured goods, the estimated magnitude of this increase is so small that the Agency has concluded that any resultant impact on foreign trade would be negligible.

IX. Environmental Assessment

This proposed rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and Department of Labor NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed rule focuses on the recduction of accidents or injuries by means of the utilization of specific work practices, procedures, and training. This proposal would not have an impact on air, water, or soil quality, plant or animal life, the use of land, or any other aspects of the environment. As such, this proposal can therefore be categorized as an excluded action according to Subpart B, Section 11.10, of the DOL NEPA regulations.

X. Paperwork Reduction Act: Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and the regulations issued pursuant thereto (5 CFR Part 1320), OSHA certifies that it has submitted the information collection requirements contained in this proposed standard to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act. Comments on these information collection requirements may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Occupational Safety and Health

Administration, Washington, DC 20503. OSHA requests that copies of such comments also be submitted to the OSHA rulemaking docket, at the address set forth below.

XI. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by June 28, 1988, and submitted in quadruplicate to the Docket Officer, Docket No. S–012A, Room N3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Written submissions must clearly identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue.

All written comments received will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by June 28, 1988.
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments and OSHA will fuly consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

List of Subjects in 29 CFR Part 1910

Lockout, Tagout, Control of hazardous energy sources, De-energize, Training, Occupational safety and health, Safety.

XII. State Plan Standards

The 23 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final standard. These States and territories are: Alaska, Arizona, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

XIII. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 22nd day of April 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

It is proposed to amend 29 CFR Part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 would be revised as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754) 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable. Sections 1910.141, 1910.142 and 1910.147 also issued under 29 CFR Part 1911.

§ 1910.150 [Redesignated from § 1910.147]

2. Section 1910.147 would be redesignated as § 1910.150.

3. A new § 1910.147 and Appendix to § 1910.147 would be added to read as follows:

§ 1910.147 The control of hazardous energy sources (lockout/tagout).

(a) *Scope, application and purpose*—(1) *Scope.* (i) This standard covers servicing or maintenance of machines or equipment in which the unexpected energization, start up, or release of stored energy could cause injury to employees, and establishes minimum performance requirements for the control of such hazardous energy.

(ii) This standard does not cover the following:

(A) Construction, agriculture and maritime employment;

(B) Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering; and

(C) Exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations, which is covered by Subpart S of this part.

(D) Oil and gas well drilling and servicing.

(2) *Application.* (i) This standard applies to the control of energy sources during servicing or maintenance of machines or equipment.

(ii) This standard does not apply to the following:

(A) Work on plug and cord type electrical equipment, for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures.

(B) Hot Tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, *Provided that* the employer demonstrates that (*1*) continuity of service is essential; (*2*) shutdown of the system is impractical; and (*3*) documented procedures, and special equipment, are implemented which will provide proven effective protection for employees.

(iii)(A) Normal production operations are not covered by this standard.

(B) Servicing or maintenance which takes place during normal production operations, such as lubricating, cleaning, and making minor adjustments and simple tool changes, are not covered by the standard, if it is necessary to perform such servicing or maintenance with the machine or equipment energized, and if such servicing or

maintenance is performed using alternative measures which the employer can demonstrate will provide effective protection.

(3) *Purpose.* (i) The purpose of this standard is to prevent injuries to employees from the unexpected energization, start-up or release of stored energy from machines, equipment, or processes when such employees are engaged in the activities listed in paragraph (a)(2)(i) of this section.

(ii) This section requires employers to establish and implement procedures for affixing the appropriate lockout/tagout devices to energy isolating devices, and to otherwise disable machines, equipment or processes to prevent unexpected energization, start-up or the release of stored energy.

(iii) Notwithstanding the provisions of § 1910.5(c)(1) of this part, the requirements set forth in this section shall apply in addition to all other lockout and/or tagout provisions in this part.

(b) *Definitions applicable to this section.*

Affected employee. A person, other than the authorized employee, whose job includes activities covered by this standard as set forth in paragraph (a)(2) of this section.

Authorized employee. A qualified person to whom the authority and responsibility to perform a specific lockout and/or tagout assignment has been given by the employer.

Energized. Connected to an energy source (mechanical, electrical, hydraulic, etc.) which has not been isolated.

Energy isolating device. A device that physically prevents the transmission or release of energy, including but not limited to the following: A manually operated electrical circuit breaker; a disconnect switch; a manually operated switch; a slide gate; a slip blind; a line valve; blocks; and similar devices used to block or isolate energy. The term does not include push buttons, selector switches, and other control circuit type devices.

Energy source. Any electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy source that is capable of causing injury to employees.

Hot tap. A procedure used in repair, maintenance and service activities which involves welding a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam, and petro-chemical distribution systems.

Lockout device. A device that utilizes a lock and key to hold an energy isolating device in the safe position.

Lockout/tagout. The placement of a lock and/or a tag on the energy isolating device in accordance with an established procedure, indicating that the energy isolating device or the equipment being controlled shall not be operated until removal of the lock and/or tag.

Normal production operations. Operations that include those activities which enable the machine or equipment to perform its intended production functions, and which are carried out by employees as part of the production process, with the machine or equipment energized.

Qualified person. A person who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and has the knowledge to implement adequate methods and means for the control and isolation of such energy.

Servicing or maintenance. Functions that include workplace activities such as installing, constructing, adjusting, setting up, inspecting and maintaining or repairing machines or equipment.

Setting up. Any work that must be performed to place a machine or equipment in an operational mode.

Tagout device. A prominent warning device capable of being securely attached to an energy isolating device that identifies the applier or authority who has control of the energy control procedure, and contains information and/or instructions to prevent the operation of an energy isolating device.

(c) *General*—(1) *Energy Control.* The employer shall ensure that before an employee performs any activities where the unexpected energization, start up or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked/tagged out and otherwise disabled in accordance with paragraph (d) of this section.

(2) *Procedure.* (i) A procedure shall be developed, documented and implemented by the employer for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

(ii) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

(A) A specific statement as to the intended use of the procedure;

(B) Specific procedural steps for the shutting down, isolating, blocking and securing (lock and/or tags) of energy;

(C) Specific procedural steps for the removal and transfer of locks and/or tags and the responsibility for them; and

(D) Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

(3) *Protective materials and hardware.* (i) Locks, tags, chains, adapter pins, or other hardware shall be provided by the employer for securing or blocking energy sources where necessary under the procedure.

(ii) The lockout and/or tagout devices shall be singularly identified; shall be the only authorized device(s) used for locking out and/or tagging energy sources; shall not be used for other purposes; and shall meet the following requirements;

(A) *Durable.* The devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(B) *Standardized.* The devices shall be standardized in at least one of the following criteria: Color; shape; size; type or format.

(C) *Substantial.* Locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized.

(D) *Identifying.* The devices shall include provisions for the identification of the employee(s) applying or authorizing the application of the device.

(iii) Tagout devices/danger tags shall warn against hazardous conditions if the equipment is re-energized and shall include the legends: *Do Not Start, Do Not Open, Do Not Close, Do Not Energize*, or similar language.

Note: For specific provisions covering accident prevention tags, see § 1910.145.

(4) *Periodic inspection.* (i) The employer shall conduct periodic inspections at least annually to ensure that the energy control procedures of this standard are being implemented. The inspections:

(A) Shall be performed by an authorized employee other than the one implementing the energy control procedures; and

(B) Shall be designed to correct any deviations or inadequacies observed.

(ii) The employer shall certify that the inspections have been performed. The certification shall identify the machine or equipment inspected, the date inspected and the name of the person performing the inspection.

(5) *Training and communication.* (i) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed. The training shall include the following:

(A) Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control.

(B) Affected employees shall be instructed in the purpose and use of the energy control procedure.

(C) All other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations.

(ii) Periodic retraining shall be provided by the employer for all authorized and affected employees whenever a periodic inspection under paragraph (c)(4) of this section reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(iii) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain the employee's name and dates of training.

(6) *Energy isolating devices.* (i) Energy isolating devices that are used for the control of potentially hazardous energy sources, including valves, shall be marked or labeled to identify the equipment supplied and the type and magnitude of the energy being controlled, unless they are so positioned and arranged that those elements are evident.

(A) Valves for machines or equipment shall be permanently marked or labeled.

(B) Valves for pipeline network process operations shall be:

(*1*) Permanently marked or labeled; or,

(*2*) Temporarily marked or labeled prior to each instance of initiation of work on the line.

(ii) Energy isolating devices shall be operated only by authorized employees or under the direct supervision of authorized employees.

(7) *Notification of employees.* Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout and/or tagout controls whenever such controls directly affect their work activities. Notification shall be given before such controls are applied, and before they are removed from the equipment or process.

(d) *Application of control.* The established procedure for the application of energy control (lockout/tagout) shall cover the following elements and actions and shall be in the following sequence:

(1) *Machine or Equipment shutdown.* The machine or equipment shall be turned off or shut down by authorized employees using appropriate procedures.

(2) *Machine or Equipment isolation.* All energy isolating devices that are needed to control the energy involved shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s).

(3) *Lockout and/or tagout device application.* (i) Appropriate and effective lockout and/or tagout devices shall be affixed to each energy isolating device by authorized employees.

(ii) Lockout and/or tagout devices shall prevent or inhibit reactivation of energy isolation devices and shall be used as follows:

(A) Lockout devices, where used, shall be affixed in a manner that will hold the energy isolating devices in a "safe" or "off" position;

(B) Tagout devices, where used, shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited; and

(C) Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

(4) *Stored energy.* (i) Following the application of lockout and/or tagout devices to energy isolating devices, all potentially hazardous, stored or residual energy shall be relieved, disconnected, restrained, and/or otherwise rendered safe.

(ii) If there is a possbility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the activity is completed, or until the possibility of such accumulation no longer exists.

(5) *Verification of isolation.* (i) Prior to starting work on equipment or processes that have been locked out and/or tagged out, an authorized employee shall take the steps necessary to verify that isolation and de-energization of the machine or equipment has been accomplished.

(ii) The steps shall ensure that the lockout and/or tagout devices are so positioned or located as to isolate and de-energize the equipment or process effectively in accordance with paragraphs (d)(2) and (d)(3) of this section, and that stored energy has been rendered safe in accordance with paragraph (d)(4) of this section.

(e) *Release from control (lockout/tagout).* Before lockout and/or tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions taken by an authorized employee to ensure the following:

(1) *The machine or equipment.* The work area shall be inspected for removal of nonessential items and to ensure that components are operationally intact.

(2) *Employees.* The work area shall be checked to ensure that all employees have been safely positioned or removed.

(3) *Lockout and/or tagout device(s) removal.* Lockout and/or tagout devices shall be removed from each energy isolating device by the employee who applied the device. *Exception:* Devices may be removed under the direction of an authorized employee only under the following conditions, and only where the authorized employee follows specific procedures which have been developed for those conditions:

(i) When the employee who applied a personal lockout/tagout device is not available to remove the device; and

(ii) Unique operating conditions involving complex systems, where the employer can demonstrate that it is not feasible to do otherwise.

(f) *Additional Requirements*—(1) *Testing or positioning of energized equipment.* In situations where the energy isolating device(s) is locked and/or tagged, and there is a need to test or position the machine or equipment, the following sequence of actions shall be implemented:

(i) Clear the machine or equipment of tools and materials in accordance with paragraph (e)(1) of this section;

(ii) Clear employees from the machine or equipment area in accordance with paragraph (e)(2) of this section;

(iii) Clear the control of locks and/or tags with appropriate procedures in accordance with paragraph (e)(3) of this section;

(iv) Energize and proceed with testing or positioning;

(v) De-energize all systems and re-apply energy control measures in

accordance with paragraph (d) of this section to continue the work.

(2) *Outside personnel (contractors, etc.).* (i) Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this standard, the plant or facility employer shall inform them of the lockout/tagout procedures used by the facility.

(ii) The plant or facility employer shall assure that the lockout/ tagout procedures used by outside servicing personnel are compatible with existing in-plant procedures.

(3) *Group lockout/tagout.* (i) When lockout and/or tagout devices are used by a crew, craft, department, or other group, they shall afford the affected employees a level of protection equivalent to that provided by personal lockout and/or tagout devices.

(ii) Group lockout and/or tagout devices shall be used in accordance with the procedures required by paragraph (c)(2) of this section, including, but not necessarily limited to, the following specific requirements:

(A) Primary responsibility vested in an authorized employee for a set number of employees working under the protection of a particular group lockout and/or tagout device;

(B) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout and/or tagout of the equipment or process; and

(C) When more than one crew, craft, department, etc. is involved, assignment of overall job-associated lockout/tagout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection.

(4) *Shift or personnel changes.* Specific procedures shall be implemented during shift or personnel changes to ensure the continuity of lockout and/or tagout protection in accordance with paragraph (c)(2) of this section, including, but not necessarily limited to, coverage of the following:

(i) Provision for the orderly transfer of lockout and/or tagout devices between off-going and oncoming employees without exposure to hazards from the unexpected energization, start-up, or the release of stored energy of the equipment or process; and

(ii) Provision for ensuring that the equipment or process is being maintained in a safe condition so as to permit continued work by employees following the transfer of control over lockout and/or tagout devices.

Note: The following appendix to § 1910.147 serves as a non-mandatory guideline to assist employers and employees in complying with the requirements of this section, as well as to provide other helpful information. Nothing in the appendix adds to or detracts from any of the requirements of this section.

Appendix to § 1910.147 Control of Hazardous Energy Sources (Lockout/Tagout)

1. *Scope and Application.* This standard is a performance standard addressing procedures for the control of hazardous energy. However, the standard does not establish definitive criteria for employers to use in making their choices of control measures involving the need to use locks, tags or a combination of the two to secure energy isolating devices. For these reasons, the standard does not replace existing specific provisions relating to lockout/tagout as they currently exist in the General Industry standards, 29 CFR Part 1910.

Accordingly, the provisions of this standard are intended to supplement and support those existing provisions in 29 CFR Part 1910 where necessary. The standard provides comprehensive and uniform procedures to be applied to all industries and operations as required by paragraph (a), *Scope and application.*

The future promulgation of new or revised standards for particular types of equipment and operations will address the need for specific control measures (locks and/or tags) on an individual basis. The selection of a method of control at that time will reflect, among other considerations, a thorough evaluation of the extent of hazard exposure; the type of injury; and the risk of injury from that particular industry or operation. The present standard would then provide the basic procedure for implementation of those controls.

1.1 *Plug and cord type electrical equipment:* As covered by paragraph (a)(2)(ii)(A), this standard does not apply to plug and cord type electrical equipment for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures. This exclusion would encompass the many varieties of portable hand tools that are found in the workplace, as well as cord and plug equipment which is intended for use at a fixed location.

For most plug and cord type electrical equipment, the *effective* control measure to be used when performing maintenance and servicing activities would involve unplugging the connecting plug from its receptacle. It would also involve a work practice for the employee doing the work that would prevent him or her from being injured as a possible result of another employee replacing the plug and energizing the equipment while it was being worked on. Consequently, OSHA would expect the employee performing work on the equipment to place the disconnecting plug and cord close to his or her side, or at least in a place that is easily seen from the work area. Further, if stored energy is present in the system, it must be relieved or restrained before starting work on the equipment. Examples of equipment these measures apply to would include types such as those used in wood, metal and food processing operations and could involve circular saws, hand saws, grinders, mixers, etc.

The discussion above, while applicable to plug and cord type electrical equipment intended for use in a specific location, is not intended to address the situation involving the performance of simple tool changes on portable plug and cord type hand tools. The control methods for such tool changes will correspondingly be very simple. For example, where an employee must change the bit in a hand-held drill or the belt on a belt sander, there would be no need to remove the plug from the receptacle. On equipment of this type, control of the activating mechanism of the tool is entirely in the hands of the employee who is using it, thereby *effectively* preventing its unexpected activation by another person.

1.2 *Hot tap operations.* This standard does not apply to hot tap operations, as covered by paragraph (a)(2)(ii)(C), when the employer can demonstrate that continuity of service is essential, shut down of the equipment is impractical and documented procedures and special equipment have been implemented that will provide proven effective protection for employees.

Not all of the contingencies present in the workplace can be covered initially in a hot tap procedure. As special problems arise, the procedure should be revised accordingly. For this reason, the detailed, written procedure should be prepared or revised prior to any hot tap work, to include the most current information regarding welding, connection design, safety instructions and other appropriate instructions. To further insure that hot tapping will be performed under safe conditions, it is recommended that a checklist be utilized as a reminder to accomplish any critical steps in a desired order. The steps could be itemized under major headings involving the work (1) before starting hot tap; (2) before starting the weld; (3) before starting cutting; and (4) before removing the hot tap machine.

Implementation of the data, guidelines, and procedural steps set forth in the current American Petroleum Institute publication entitled, "Procedures For Welding or Hot Tapping on Equipment Containing Flammables," Second Edition, (November 1978, Publication 2201), will meet the intent of paragraph (a)(2)(ii)(C).

1.3 *Normal production operations.* This standard does not apply to normal production operations as covered in paragraph (a)(2)(iii)(A). Generally, insofar as these hazards are concerned, machines and equipment are designed to safely accommodate the performance of normal production operations. Additional safeguards are mandated by regulatory provisions (e.g., §§ 1910.212, 1910.219) covering the application of machine and equipment guards and devices. However, when these considerations are not sufficient, paragraph (a)(2)(iii)(B) provides that if it is necessary to perform servicing or maintenance during normal production operations with the equipment energized, such servicing or maintenance shall be performed using

alternative measures which the employer can demonstrate will provide effective protection.

The measures required by paragraph (a)(2)(iii)(B) would apply to many situations in which repetitive minor adjustments are required. Controls such as inch and jog devices, which limit machine movement when activated, can prevent employee exposure to moving machine parts or components and are considered appropriate devices for the purpose of this provision.

There are many practical applications for these control measures currently in use for production operations. For example, inch and job devices have been included in the design of machines or equipment used by the printing industry to handle set-up and maintenance problems that deal with straightening or feeding paper through their presses. The textile industry uses them on looms to enable loom fixers and operators to repair "end" (thread) breaks. They are also found extensively on machines such as power presses used by the metal stamping industry, when power is needed during set-up activity to make final adjustments before turning the press over to operating personnel. In all of these examples, the use of specially designed control circuits and control equipment has been combined with good operating procedures to limit effectively employee exposure to the hazards caused by the unanticipated movement of machines or equipment components.

Paragraph (a)(2)(iii)(B) will also provide flexibility during normal production operations for the performance or work on energized equipment when servicing or maintenance activities involving simple tool changes or adjustments are necessary. A simple tool change on an automatic chucking machine, for example, might require the operator to replace a worn carbide cutting tool insert in a tool holder when inspection of a finished workpiece indicated the need. The minor adjustment then necessary would be for the operator to reset the tool holder to a position that would result in a dimensionally accurate finished workpiece. The machine operator would need to be in control of the "off-on" switch (circuit control device), with the switch so located that the equipment could not be activated without his or her knowledge during the tool change. On completion of these activities the machine would then be restored to the fully automatic mode.

2. *Procedure.* When maintenance, repair, servicing and other activities covered by this standard expose employees to potentially hazardous energy, a specific written procedure for the control of that energy is required by paragraph (c)(2). This control procedure shall be in addition to any general safety policy and procedure established by the employer. As required by the standard, the control procedure must clearly and distinctly outline the purpose, responsibility, scope, authorization, rules, techniques to be applied, and measures to enforce compliance.

The written energy control procedure required by this standard need not be complicated or detailed, depending on the complexity of the equipment and the control measures to be implemented. For example, if there is a single machine with a single energy source that must be isolated, and the control measure chosen is simple, such as locking out a single energy source during servicing, the written procedure will not be complicated. The steps set forth in the standard will be incorporated into the procedure with very little detail, reflecting the lack of complexity of the control measures.

The control procedure need not be unique for a single machine or task; in fact, a single procedure may be used to apply to a group of similar machines or tasks. However, if the complexity of the task is such that a generic or facility-wide general procedure will not address the recognized hazards, a specific procedure or a supplement to the general procedure must be provided to cover the use of additional methods and techniques needed to ensure control.

OSHA recognizes that, in the aggregate, the paperwork burden associated with the requirement for a written program for every workplace covered by the standard could be quite large. OSHA solicits comment on alternatives which could reduce the burden. Specifically, OSHA solicits comment on methods by which this burden could be reduced for small business under the Regulatory Flexibility Act and the Paperwork Reduction Act.

The typical lockout/tagout control procedure clearly assigns responsibility for each step of the process and covers topics such as where isolation or blocking of energy is to be accomplished; how deenergization is to be verified; what method is to be used for securing energy isolating devices; how responsibility is to be transferred during shift changes; how control devices are to be removed; and how re-energization is to be accomplished. The documentation of procedures should be as detailed as necessary to provide a clear understanding of these elements so that the controls are uniformly and safely applied, and removed each time it becomes necessary to do so.

This Appendix contains a sample procedure in which locks are assigned to employees for the purpose of securing energy isolating devices. It is a procedure that is not considered unique and that can be applied to a group of machines, equipment or tasks with considerable flexibility. The sample procedure can be used as a guide for developing a specific lockout/tagout procedure, with modification to fit the particular application. *Figure 1* in this appendix provides the basic concept involving lockout/tagout procedures for electrical energy, and *Figure 2* provides a sample procedure covering hydraulic or pneumatic energy sources.

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Figure 1
Lockout/Tagout Procedure for Electrical Energy Source

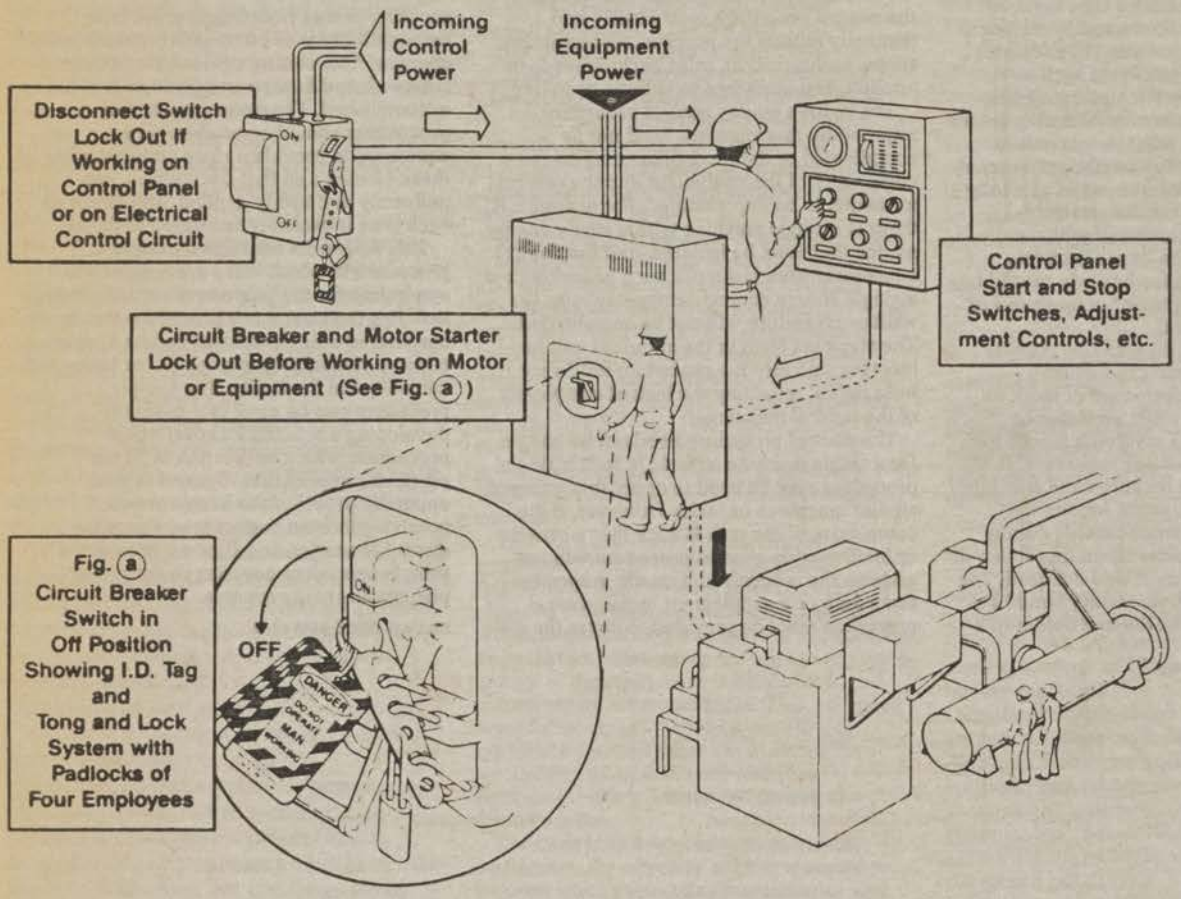

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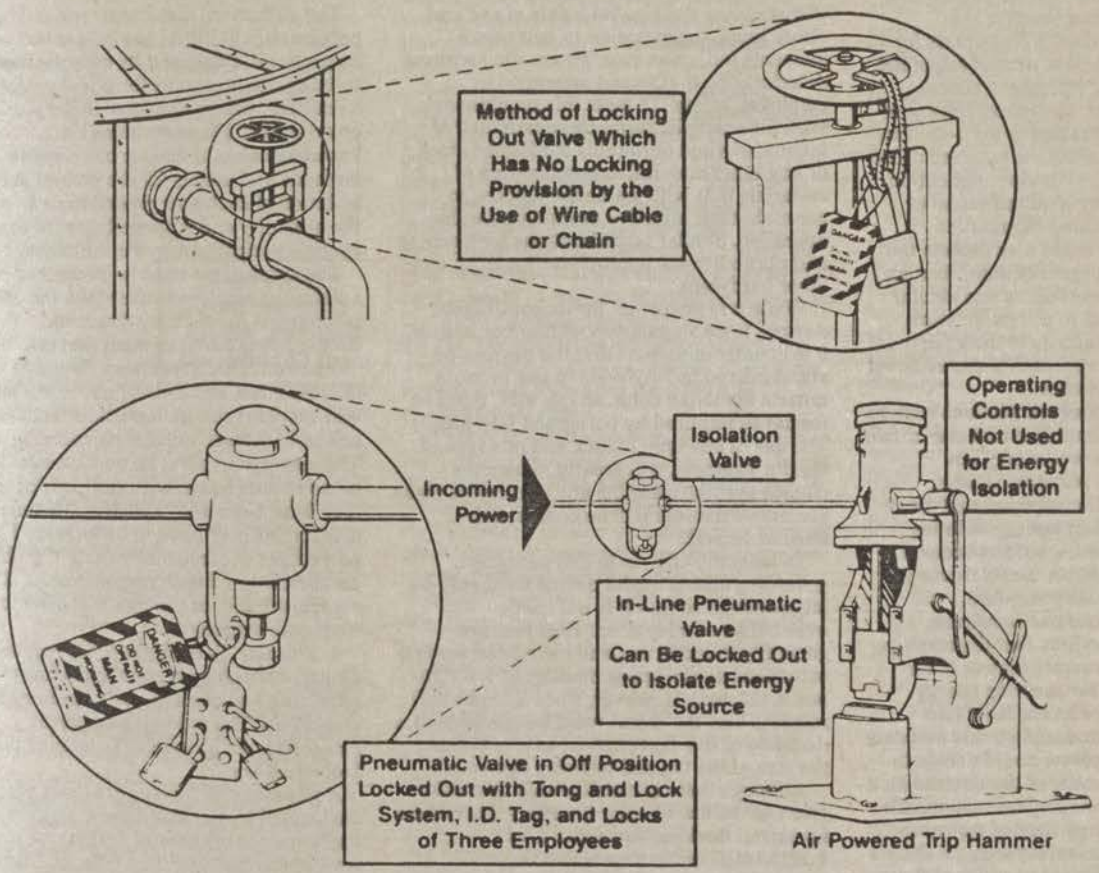
Figure 2
Lockout/Tagout Procedure for Hydraulic-Pneumatic Energy Source



Reproduced from American National Standard Z244.1-1982

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The use of either a unique lockout/tagout procedure or a supplement to the general procedure may be necessary if there is a need to perform a particular job on a one-time or infrequent basis, such as in large scale, turnaround, process-oriented operations. It might also be appropriate with respect to jobs extending beyond the initial work period or established shift schedule involving the participation of multiple personnel or crafts. Another unique application would involve complex situations using multiple types and sources of energy.

The determination to use a supplement to the general lockout/tagout procedure for covering a particular operation should be based on the need to address multiple hazards in a more detailed manner in order to provide effective protection for employees. One acceptable method to cover the complexities involved with procedures for these cases is to include a written sequence, in check list form, for equipment access, lockout and/or tagout, clearance, release of control, and re-energization or start-up. The check list(s) would reflect the required order for energy isolation and device application, and would specify any required visual or audio signals, and related information. Acceptable methods might also include the use of written work permit or authorization systems, clearance procedures and similar methods that are used to document work practices for gaining access to the equipment or process or for the application and removal of energy control measures.

Simple lockout/tagout applications such as those involving one employee and one or two types of energy and sources may not necessarily require a prepared written sequence listing of all equipment and the specific location of their energy isolating devices. However, such a written sequence listing should be available for reference in developing an adequate procedure.

3. *Protective material and hardware.* Paragraph (c)(3)(i) requires that the employer provide locks, tags, adapter pins or other hardware necessary for securing energy sources. The employer has at least two options available to accomplish this purpose. For example, the employer could decide to issue a sufficient quantity of the devices on a one-time basis to all employees responsible for implementing energy control measures. As an alternative, the employer might decide merely to have a sufficient quantity of the devices on hand and then make them readily available to employees for assignment and distribution as the need dictates.

For lockout or tagout devices to be singularly identified, as required by paragraph (c)(3)(ii), emphasis needs to be placed on using unique devices; that is, devices that are distinctive and easily recognized. Locks, for example, can be painted red, and tags can convey a special message such as "Do Not Start—Employees Working on Machinery." This criterion is further enforced by §1910.145(f) which requires the major message of the tag to be understandable to all employees who may be exposed to the identified hazard.

Paragraph (c)(3)(ii) prohibits the use of unique lockout and/or tagout devices for purposes other than the protection of employees from potentially hazardous energy. For example, the use of lockout devices for toolboxes, clothing lockers, etc., and tagout devices for non-related communications is not permitted. Employer determination in maintaining effective control of these conditions in day-to-day operations as well as during employee training can help ensure that the devices provided will be recognized as the only ones authorized for use under the specific conditions set forth in this standard. Limiting the use of these devices will also ensure that the sight of the particular lock or tag will provide a consistent message to the employee concerning the hazard being addressed.

The durability of lockout/tagout devices, as required in paragraph (c)(3)(ii)(A), includes consideration of their capability of withstanding anticipated levels of use and abuse involving exposure to workplace elements (oil, chemicals, steam, etc.) without deterioration that would compromise employee safety. To meet this requirement, tags, for example, might be constructed of laminated vinyl or durable cardboard stock or any other material or combination of materials that will enable the devices to maintain their effective usefulness for the operation. Similar considerations for strength and durability are appropriate for locks and other hardware.

While it is important for lockout/tagout devices to be singularly identified or unique, it is equally important that the devices be standardized facility-wide in one or more criteria involving color, shape, size, types or format as required by paragraph (c)(3)(ii)(B). The use of one type of lock and one type of tag, for example, will greatly reduce the chance that the meaning and purpose of these protective devices will be confused or misunderstood.

To meet the criteria in this paragraph governing size, a tagout device need only be large enough so that it is not easily overlooked or misplaced. Tags that are generally found in use and have been serving satisfactorily are approximately 3" x 6" (76 mm x 152 mm). However, since § 1910.145(f) requires that the signal word be readable at a distance of five feet (1.52 m) as a minimum, the size of the tag and lettering can vary.

Although there is considerable flexibility given to the use of color to satisfy this criteria for tagout devices, Appendix A of § 1910.145(f) recommends that the predominant color for the danger tag be red, and that the lettering shall contrast with the tag's background color for readability.

The intent of the requirements of paragraph (c)(3)(ii)(D) is that the design of lockout or tagout devices provide a means to display identification of the employee or employees applying or authorizing the application of the device. Tags need only provide adequate space for the name or names of the employees who are acknowledging application. Locks can be handled in the same manner, with the use of stenciled name indentification or with the employee's name or clock number stamped on the body of the lock. When it is not possible or practical to etch or stamp a lock with the identification of the employee who applied it, a tag conveying this information can be attached to the lock to serve the same purpose.

4. *Periodic inspections.* Paragraph (c)(4) requires periodic inspections to ensure that the lockout/tagout procedures of this standard are being followed. Acceptable methods for meeting these requirements would include random audit and planned visual observation of the workplace while the equipment is being shut down and deenergized to determine the extent of employee compliance with the procedures. Checking equipment status for position of the switches or valves and the presence of locks and/or tags when maintenance or servicing activities are known to be occurring would also verify proper use of the procedures. Another method could involve modifying and adopting regular plant safety tours to meet this need.

The authorized employee required by paragraph (c)(4)(i)(A) to perform these inspections is one who by experience and/or training can recognize the effect potentially hazardous energy can have in the workplace environment. He or she must be knowledgeable in the use of adequate methods and means for the control and isolation of such energy, and must be given the authority and responsibility for this specific assignment by the employer.

The inspections must be performed by an authorized employee other than the one responsible for shutting down and deenergizing the equipment that is to be worked on. The inspections should be unannounced and carried out on the job site, and should result in immediate feedback and action to correct any discrepancies noted. The inspections must be performed at least on an annual basis, with certification that they have been accomplished. The number of inspections may have to be increased if such procedures are frequently used, if problems are encountered with compliance, or if the equipment and/or process is subject to frequent changes.

5. *Training.* Paragraphs (c)(5) requires an effective training program, including periodic retraining and certification of training of employees. The following employee categories can be used to determine their individual needs:

Authorized employees are those who are designated by the employer to implement or apply the energy control procedures in the workplace. As "qualified persons," they need to be trained to recognize and understand the particular hazards involved with the tasks to be performed in the workplace and with the energy to be controlled. The training must also provide for a thorough understanding of the energy control measures best suited for use under existing conditions and the steps necessary to apply the control measures effectively, and to remove them safely. Classroom instruction is one method that can be used for training purposes. Classroom training can be augmented with the use of films, slides, video tapes, demonstrations using mock-up simulators, etc., to increase its effectiveness. On-the-job training using hands-on application, under the guidance of an authorized employee, is another method of training. The standard requires that certification of the training of authorized

employees be maintained by the employer and kept current.

Affected employees, those performing the activities identified in the scope and application of the standard, other than authorized employees, need to be instructed in the purpose and use of hazardous energy control (lockout/tagout) procedures. The instruction should provide a clear understanding of the devices used and the methods for the application and removal of such devices. The instruction should be sufficient to enable the employee to determine if a control measure is needed in a potentially hazardous situation before proceeding with the assigned task. It can also emphasize the importance for all employees to honor the instructions given on tags for their own protection as well as that of their co-workers. The instruction methods chosen for affected employees can be any of those suggested for use by authorized employees; classroom, on-the-job, or a combination of both. The standard also requires that certification of the training of affected employees be maintained by the employer and kept current.

All other employees whose work operations are or may be affected by the energy control procedure need to be instructed about the procedure and how it affects their work operations, as required by paragraph (c)(5)(i)(C). Several methods can be used to reach this objective. For example, the importance of lockout/tagout procedures might be discussed with all new employees during their initial orientation period. Discussions should cover employee hazard exposure, the purpose and intent of the procedures, and recognition of the lockout and/or tagout devices used by the employer. Other methods such as the use of employee handbooks and regularly scheduled safety meetings can also be used to communicate with employees and to reinforce company policy for the use of lockout/tagout procedures.

It is recommended that all levels of supervision involved in the activities covered by the scope and application of this standard be trained, with special emphasis on first-line supervision, in order to ensure that the procedures are followed by all.

6. *Periodic retraining.* Paragraph (c)(5)(ii) requires that periodic retraining be provided for both authorized and affected employees whenever an inspection under paragraph (c)(4) reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. It requires this training to reestablish employee proficiency and introduce new or revised control methods and procedures as necessary.

Full and uniform utilization of an energy control procedure is necessary in order for that procedure to maintain its effectiveness. Therefore, every effort should be made during the periodic inspection performed under paragraph (c)(4) to determine whether or not the procedure is being used properly. If deviations are observed, retraining in accordance with this paragraph ((c)(5)(ii)) would be required. However, retraining could be triggered by events separate from the findings of a periodic inspection. For example, an employee working with an energy control procedure might be injured in the course of his duties. If a subsequent investigation indicated that the employee failed to operate within the guidelines of his control procedure, retraining would be required.

In addition, the investigation might also reveal that the procedure itself was not adequate. Such inadequacies in the procedure could be the result of using a general procedure that does not handle effectively a specific application, or they may arise because changes have been made to the machine or equipment that did not take the existing energy control procedure into consideration. In such cases, when changes to the energy control procedure must be made, the employer would be required to retrain employees in the new or revised procedures in accordance with paragraph (c)(5)(ii).

7. *Energy isolating devices.* Paragraph (c)(6)(i) requires that energy isolating devices be marked or labeled to include the equipment supplied and the energy type and magnitude, unless they are positioned and arranged so that their purpose is evident. This applies to all energy isolating devices, including valves that are used to control the flow of energy—devices such as those found on machines or equipment utilizing hydraulic, pneumatic, or steam pressure as an energy source. The provision also applies to valves used in pipeline network process operations such as those found in petroleum and chemical operations.

When it is necessary to locate and mark or label energy isolating devices, as required by this paragraph, the information needed to accomplish the task can be obtained from engineering or facility design sources such as plant layout drawings, equipment blueprints, engineering specification sheets, schematic drawings, and flow process charts or drawings. Once determined from these data, the number and location of devices involved in the process will need to be physically confirmed in the workplace.

Energy isolating devices do not need to be marked or labeled when it is obvious from their location within a system what equipment they supply and what type and magnitude of energy is being controlled. For example, a wall mounted electrical disconnect switch of a type known to carry 120–440 volt service that is observed to have only one lead to a single machine would not require the disconnect switch to be marked or labeled. Similarly, a valve located so that it obviously can only service a specific machine and can be traced visually to a main line source that identifies the type and magnitude of energy would not require marking or labeling.

Energy isolating devices (valves) for all machines or equipment that are needed for the control of potentially hazardous energy, as required by paragraph (c)(6)(i)(A), can be identified and permanently marked or labeled in a *plant wide* effort *prior* to implementing a lockout/tagout procedure. As an alternative, the energy isolating devices that are to be used to control hazardous energy sources for a *specific* machine or equipment can be permanently marked or labeled *at the time* the procedure is being utilized and energy isolating devices are to be secured.

The identification of energy isolating devices used for pipeline network process operations requires the use of one of the two options offered in paragraph (c)(6)(i)(B). Of the two options, permanently marking or labeling the devices offers the most advantages for emergency shutdown or start-up procedures.

The option for temporarily identifying the energy isolating devices prior to each instance of work initiation on the line offers the most flexibility for dealing with a changing product mix or frequent process design changes. It can be used on a job-to-job basis. In these instances locating, identifying and temporarily tagging, as a part of the lockout/tagout procedure, would be sufficient to comply with this provision.

8. *Notification of employees.* Paragraph (c)(7) requires, for all covered activities in which affected employees are engaged, that an authorized employee must notify the affected employees before taking any action to apply or remove lockout/tagout controls.

This communication is essential to ensure that employees do not unknowingly attempt to energize machines or equipment that have been taken out of operation and de-energized for the performance of activities covered by this standard. A lack of information about this condition could subsequently expose the employee working on the equipment, as well as the employees attempting to re-energize the system, to potential injury. The communication is also necessary to prevent injury to employees from the flow of hazardous energy that could result from a failure to inform them that control measures have been removed. In these cases, the employee might have mistakenly believed that the system was still de-energized and that it was safe to continue work.

There is a wide range of methods available for use to meet these requirements for notification of the application and removal of lockout/tagout controls. Choice of the method selected needs to be based on the seriousness of the hazard, and on the size and complexity of the operation involved.

For relatively uncomplicated situations, acceptable notification can be in the form of discussions with affected employees by an authorized employee simply to inform and caution them of the action to take place.

In other cases, it may be necessary to cover, in more detail, any specific operating problems, unusual equipment modes and other factors associated with the action. Written work permit or authorization systems, clearance procedures and similar methods used to document work practices for gaining access to the machine or equipment and for the application and removal of energy control may also be used when these conditions arise.

9. *Equipment or process isolation.* The requirement for a lockout/tagout procedure to cover the step in paragraph (d)(1) for shutting down or turning off the machine or equipment is a preliminary step. Further action is required by the procedure, as covered by paragraph (d)(2), to ensure that all energy

isolating devices needed to control the energy involved are physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s). Energy isolating devices that require locating and positioning to block the release of energy include manually operated electrical circuit breakers, disconnect switches, manually operated switches, slide gates, slip blinds, line valves, blocks and similar devices—many of which have a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit type devices are not adequate in themselves to be considered energy isolating devices.)

The following information should be used to identify the types of energy needing isolation and to provide some acceptable methods to accomplish that purpose:

(a) The isolation of potential energy involving gravity is accomplished by placing blocks made of metal, wood or other suitable materials under the mechanism or by pinning the linkages in a position where gravity will not cause the mechanism to fall.

(b) The isolation of potential energy involving springs is accomplished by blocking the spring in a safe position, either by pinning or clamping, or by securing the device in some other manner to eliminate the potential for unrestricted or undesired movement.

(c) The isolation of electrical energy is accomplished by placing manually operated electrical circuit breakers, disconnect switches and manually operated switches in the "off" position.

(d) The isolation of thermal (steam) energy and also of potential energy involving pressure is accomplished by closing valves and maintaining an open bleed condition in the system to prevent energy build-up.

For example, if mechanical motion involving rotation, translation, or a combination thereof, must be isolated, one or more of the following control measures is appropriate to remove energy from the driving mechanism:

(1) Remove segments of mechanical linkages such as by dismantling push rods, removing belts and flywheels, etc.;

(2) Place blocking devices such as wood or metal blocks between components to prevent hazardous movement;

(3) Disconnect the main source of electrical power; and/or

(4) Close hydraulic and/or pneumatic valves and maintain an open bleed condition to prevent energy build-up.

It is recommended that the written check list (sequence) procedure for the order of energy isolation and device application, as detailed in paragraph 2 of this Appendix, be used—even for the most routine operations.

10. *Lockout/tagout device application.* Paragraph (d)(3) requires that means be taken, once energy has been effectively isolated from a machine or equipment upon which work is to be performed, to identify the appropriate control measure(s) (locks/tags) for use, and to provide for their application to the energy isolating device. The paragraph further requires that use of the control measure selected must effectively prevent the accidental or inadvertent energization of the machine or equipment.

The selection of a specific control measure involving the use of a lock only, tag only, or the combination of a lock with a tag must be given careful consideration. Considerations in the selection process must include the degree of exposure to the hazard and the risk and severity of potential injury for the operation that is being evaluated. Other factors for consideration would involve the extent of employee training, the accessibility of energy controls to affected employees while they are performing their assigned tasks, and the accessibility to unqualified employees in the area. The extent of employer commitment to a proven effective method and procedure is also an important factor.

Where there is no specific OSHA standard which requires the use of a particular control measure for securing an energy isolating device on a given type machine or equipment it is recommended that the following guidelines be followed:

A lock and tag should be used in combination whenever it is feasible to apply them as control measures to secure an energy isolating device. For example, a machine provided with energy isolating devices capable of being locked out would use this control method when employees are required to climb into the machine to clean or repair it. This method of control is particularly applicable when the energy isolating devices are not within the servicing employee's reach or view during the servicing operation, but are accessible to unqualified or uninformed personnel.

The use of tags alone should be limited to those instances where complex integrated systems exist; where the use of locks would be unnecessarily restrictive and burdensome; and where proven effective measures have been developed to supplement the use of tags. Some operations adopting this type of control measure commonly refer to the methods as "Safe Work Practice Procedures," "Work Permits," and "Pipe Entry Procedures."

Other circumstances in which tags would be a protective control measure would be those in which access to the energy isolating device is limited to qualified persons and only those necessary for the operation. Qualified persons are those trained to recognize hazardous energy sources, to utilize adequate means for their isolation and to observe the posted warning. Access may be limited by physical location such as elevation, or by procedural means such as color coded badges. Use of tags as a control measure for other than complex, integrated systems should require, in addition, a periodic review to determine its continuing capability of functioning as a reliable and effective control. This review should evaluate changing operating conditions, injury data, near-misses or other pertinent information relative to the need for a decision to retain or change the method of control.

11. *Stored energy.* Stored residual or potential energy is not as obvious a hazard as the incoming energy supply. For this reason special effort is required in paragraph (d)(4) to identify and control any stored energy that could present a hazard. The paragraph also requires that if stored hazardous energy is present in any form, measures need to be taken to ensure that the energy is eliminated or reduced to a non-hazardous level.

Forms of energy which may be stored in sufficient quantities to present hazards include:

(a) Hydraulic or pneumatic pressure;

(b) Pressure below atmospheric, such as in vacuum systems;

(c) Compressed or extended springs;

(d) Potential energy due to gravity;

(e) Stored energy as in fly wheels;

(f) Static electricity;

(g) Stored electrical energy as in batteries or capacitors;

(h) Thermal energy due to residual heat or low temperatures; and

(i) Residual chemicals in pipes which may cause thermal or pressure buildups.

Energy forms such as those listed above are required to be relieved, disconnected and/or restrained, in order to comply with this provision of the standard. For example, methods such as holding a machine member against gravity by blocking or suspension, and preventing the release of a spring force by clamps, brackets or pins specifically designed for that purpose, can be used to prevent hazardous movement of the machine or equipment. For the control of kinetic energy, a determination needs to be made that all moving (coasting) parts that could cause injury are stopped, such as flywheels, grinding wheels, and saw blades. In the case of electrical circuits, capacitors etc., grounds can be used to discharge energy. To release pressure in steam, pneumatic, hydraulic or process piping lines, bleed valves can be installed and operated or the lines can be broken.

The prevention of reaccumulation of hazardous energy levels, as also required by paragraph (d)(4), can be accomplished by using devices such as self-bleeding valves or by instituting special procedures for monitoring the machine or equipment to ensure that the stored energy is maintained at a safe level.

12. *Verification of isolation.* Paragraph (d)(5) requires verification by an authorized employee that de-energization has been effected prior to the start of activities covered by this standard. While the continued awareness of workplace conditions has advantages throughout the use of lockout/tagout procedures, it is particularly effective during this phase. For example, visual observation, as a first step, can confirm that switches, valves, breakers, etc., have been properly moved to, and secured in, the "off" position. However, because visual inspection does not always confirm de-energization, effective methods need to be used to demonstrate that all hazardous energy has been isolated and blocked before affected employees can begin their activities.

An acceptable method, for example, would provide that one or both of the actions noted below be accomplished following the application of lockout/tagout devices and the other steps necessary to control stored energy:

(a) Operate the machine or equipment operating controls (push buttons, switches, etc.) to determine that the energy isolation actions have been effective.

Caution: Return operating controls or devices to the "off" or "safe" position after each test.

(b) Test the machine or equipment by use of appropriate test equipment and visual inspection to determine that the energy isolating has been effective.

13. *Release from control—(equipment or process).* Paragraph (e)(1) requires that, prior to removing lockout/tagout devices from the machine or equipment, the workplace must be inspected for obstructions, incomplete work, etc. Examples of items to be checked should include, but not be limited to, the following:

(1) Tools, materials, mechanical restraints, etc., used to service the equipment should be removed;

(2) All guards that were removed should be replaced;

(3) All electrical wiring left in an exposed condition should be covered; and

(4) All pipes that were opened for repair or draining purposes should be closed and connected properly.

In very simple situations, for example, where one energy source and isolation device exists and the area is easily in view of the authorized employee, a visual inspection of the work area can be made to ensure that all nonessential items have been removed and that all components are operationally intact.

Complex situations, however, such as those involving groups of employees or several crafts, and those involving multiple sources and types of energy, can use a team approach for inspection purposes. These inspections can be performed by qualified personnel using check lists to check for completion of the task being performed to ensure that components are intact and the units in place before the machine or equipment is released from lockout/tagout control and energy is restored.

14. *Release from Control (Employees).* Paragraph (e)(2) requires that an authorized employee ascertain that all employees are physically clear of the equipment before restoring energy to the machine or equipment under control. Acceptable methods to accomplish this provision could include the use of a personnel count or other administrative techniques. For example, the control measures can vary from a simple visual check or observation of the workplace when conditions permit, to more comprehensive measures, such as those discussed in other paragraphs of this appendix dealing with *Procedure, Group lockout/tagout,* and *Shift or personnel changes,* where multiple personnel and energy sources demand more stringent control procedures.

15. *Release from Control (Device Removal).* The responsibility for removal of lockout and/or tagout devices from energy isolating devices must be strictly controlled, as required by paragraph (e)(3)(i) of this standard, and limited to employees who applied the device, or to action taken under the direct supervision of an authorized employee. However, to cover those instances where employees are not available to clear the control of their personal lock or tag protection devices because of sickness, injury, key loss or for other emergency conditions, a specific documented procedure needs to be employed in order to preserve the integrity of the lockout/tagout condition and to meet the requirements of paragraph (e)(3)(ii). Based on the circumstances and complexities involved with an operation, an example of such a procedure might include the following as acceptable control measures:

(a) Determine the availability of the responsible employee through contact with his/her immediate supervisor, the health unit, a time card check, or a telephone call to the employee's home.

(b) Provide for approval by all line supervisors affected by the lockout condition in authorizing emergency removal of locks and/or tags to clear the system of control measures.

16. *Outside personnel (Contractor, etc.).* When outside personnel must work on machines or equipment their activities can create hazards which normally are not present for the regular plant or facility employees. Accordingly, paragraph (f)(2) requires that the employer inform outside contractors or service representatives that everyday contact between employees from both sides can result in injuries when they are working under conditions involving hazardous energy control procedures. Such indoctrination of outside personnel can prevent injuries that could occur due to misunderstandings by either the contractor or plant employees concerning the lockout/tagout procedures to be used in general, as well as by those dealing with the recognition of hazards relating to the use of specific lockout or tagout devices (locks or tags, etc.).

One method to use for compliance with these provisions might involve the following:

(a) The employer provides a copy of the company or facility lockout/tagout procedure to an authorized representative of the contractor or service representative; and

(b) A mutual understanding is reached between the employer and the authorized representative of the contractor or service representative as to what procedures and what devices would be used. It is recommended that verification of the understanding be in written form which can easily be included in a service contract.

17. *Group lockout/tagout.* Situations exist where, due to the scope of the job, the complexity of the machine or equipment the number of involved employees, crafts, etc., a more practical method of lockout/tagout control is required than the type that is dependent on a single individual to locate, isolate, and secure potentially hazardous energy. Under these circumstances, however, the procedures and techniques used to comply with paragraph (f)(3) must afford employees a level of protection equivalent to that provided by personal lockout/tagout devices.

For example, one method to meet this requirement involves using a supervisory lockout procedure in which the supervisor is the authorized employee with responsibility for the safety of employees working under the protection of a lockout device. After the machine or equipment has been released to the supervisor, and has been locked and tried (isolation verified), the supervisor places the keys used to secure the locks on the energy isolating devices in a lock box. The box is then locked by the "lockout supervisor" using his own personal lock. With the adequacy of the lockout condition thus confirmed, the supervisor (authorized employee) can then permit each employee in the group to affix his or her own lock to the box lid.

Working in reverse, each employee would be required to remove his or her own lock from the box lid when he or she finished the work or at the end of the shift. The "lockout supervisor's" lock would be required to remain on the lock box until all work has been completed on the machine or equipment and it is ready to test or turn over to the operating group, or until responsibility is transferred to another "lockout supervisor" who would then be required to place his or her own lock on the box.

Similar procedures would apply to those methods involving the use of multiple tags in which group members apply and/or remove tags on energy isolating devices, lockout boxes, and lockout boards or cabinets. Where machine or equipment complexity dictates the need, a check list can be used as an additional procedural control measure to verify and account for all participating employees and for the number and location of energy control and lockout devices. The check list can be used for the purpose of removing as well as applying energy control devices.

18. *Shift or personnel change.* To ensure lockout/tagout protection for employees during shift or personnel changes, paragraph (f)(4) requires that effective procedures be developed and implemented to provide for an orderly transfer of control measures covering the machine or equipment involved, and to be certain that it is maintained in a safe condition for continued work.

Acceptable procedures to meet these requirements can vary, depending on the complexity of the operation and the number of employees taking part in the activity. For example, in some cases it would be acceptable for the authorized or supervisory employee to require the on-coming shift employees to place their locks and/or tags on the machine or equipment before the off-going employees may remove theirs. The authorized or supervisory employee can then check to verify for isolation and safety of the equipment before continuing the work.

However, when working with the more complex operations involved with lockout and/or tagout activities—those that cover a large number or several groups of employees, as well as those dealing with many and varied locations of energy isolating points and lockout or tagout devices—the procedure would need to include additional provisions for the transfer of control, such as the use of sign-in and sign-out logs, or a lock/tag number system to list and account for the employees, energy isolating points and devices to accomplish a more complete and orderly transfer of control.

It is recommended that the procedures used to transfer control measures during shift or personnel changes include the need for participating authorized or supervisory employees to certify the release and

acceptance of responsibility for the safety of the groups with which they are involved.

19. *References.* The following references provide information which can be helpful in applying the requirements contained in the standard.

1. "Accident Prevention Manual For Industrial Operations, Eighth Edition, 1980"; National Safety Council, 425 North Michigan Avenue, Chicago.

2. "American National Standard—For Personnel Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements, ANSI Z244.1–1982"; American National Standards Institute Inc., 1430 Broadway, New York, N.Y. 10018.

3. "Electrical Safety Requirements For Employee Workplaces, 1981, NFPA 70E Part II, Safety Related Work Practices, 1981"; The National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269.

4. "Guidelines For Controlling Hazardous Energy During Maintenance and Servicing", National Institute for Occupational Safety and Health, Publication No. 83–125, 1983; U.S. Department of Health and Human Services, Public Health Service, Centers For Disease Control, National Institute for Occupational Safety and Health Division of Safety Research, Morgantown, West Virginia 26505.

5. "Procedures for Welding or Hot Tapping on Equipment Containing Flammables", Second Edition (1978), Publication No. 2201; The American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

Sample Lockout Procedure

The following sample lockout procedure is provided to assist employers in developing a procedure which meets the requirements of the standard. A tagout procedure would be similar in format. For more complicated systems, a more comprehensive procedure would need to be developed, documented, and implemented.

Lockout

Lockout procedure for (Name of Company).

Purpose

This procedure establishes the minimum requirements for the lockout of energy sources. It shall be used to ensure that before an employee performs any servicing or maintenance activities where the unexpected energization, start-up or release of stored energy could occur and cause injury, all potentially hazardous energy shall be isolated and locked out.

Responsibility

All employees shall be instructed in the safety significance of the lockout procedure by (designate by job title). Each new or transferred affected employee shall be instructed by (designate by job title) in the purpose and use of the lockout procedure.

Preparation for Lockout

A survey shall be made to locate and identify all energy sources to be certain which switch, valve or other energy isolating devices apply to the equipment to be locked out. More than one energy source (electrical, mechanical, or others) may be involved. Questionable energy source problems shall be resolved before job authorization is obtained and lockout commences.

Sequence of Lockout Procedure

(1) Notify all affected employees that a lockout is required and the reason therefor.

(2) If the equipment is operating, shut it down by the normal stopping procedure (depress stop button, open toggle switch, etc.)

(3) Operate the switch, valve, or other energy isolating device so that each energy source (electrical, mechanical, hydraulic, etc.), is disconnected or isolated from the equipment. Stored energy (such as that in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam, or water pressure, etc.) must also be dissipated or restrained by methods such as grounding, repositioning, blocking, bleeding down, etc.

(4) Lock out the energy isolating devices with an assigned individual lock.

(5) After ensuring that no personnel are exposed, and as a check on having disconnected the energy sources, operate the push button or other normal operating controls to make certain the equipment will not operate.

Caution: Return operating controls to neutral or "off" position after the test.

(6) The equipment is now locked out.

Restoring Equipment to Service

(1) When the job is complete and equipment is ready for testing or normal service, check the equipment area to see that no one is exposed.

(2) When equipment is all clear, remove all locks. The energy isolating devices may be operated to restore energy to equipment.

Procedure Involving More Than One Person

In the preceding steps, if more than one individual is required to lock out equipment, each shall place his or her own personal lock on the energy isolating device(s). One designated person of a work crew, or a supervisor with the knowledge of the crew, may lock out equipment for the whole crew. In such cases, it shall be the responsibility of that individual to carry out all steps of the lockout procedure and inform the crew when it is safe to work on the equipment. Additionally, the designated person shall not remove a crew lock until it has been verified that all individuals are safely removed.

Rules for Using Lockout Procedure

All equipment shall be locked out to protect against accidental or inadvertent operation when such operation could cause injury to personnel. Do not attempt to operate any switch, valve, or other energy isolating device bearing a lock.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Submission of Regular Amendments

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of regular amendments to the sentencing guidelines and commentary to the Congress for review. Notice of additional temporary, emergency amendments to the sentencing guidelines and official commentary. Request for public comment.

SUMMARY: Pursuant to its authority under section 994(p) of Title 28, Chapter 58, U.S.C., the Commission has submitted to the Congress for review two additional sentencing guidelines and an amendment to an existing guideline. Additionally, the Commission has incorporated in its regular amendments report the re-promulgation of the October 1987 revisions to the Commentary and a policy statement and the temporary, emergency amendments previously issued by the Commission effective January 15, 1988. Notice of these proposed guideline amendments was published in the **Federal Register** of February 19, 1988 (53 FR 5103] and a public hearing on the proposed amendments was held in Washington, DC, on March 22, 1988. After review of the hearing testimony and additional public comment, the Commission voted unanimously (6–0) to promulgate these amendments and transmitted them to the Congress on April 18, 1988. As stated in section 994(p), the amendments will take effect "one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress."

In addition, pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987, the Sentencing Commission adopted a series of temporary amendments at its April 19 meeting. By law these amendments are temporary, but the Commission is considering their adoption as regular amendments next year. The Commission may report these and other amendments to the Congress subsequent to the convening of the first session of the 101st Congress, but not later than May 1, 1989. The Commission invites public comment on these amendments and any other aspect of the guidelines.

DATES: The effective date of the regular amendments is 180 days from their submission to the Congress on April 18, 1988, or October 15, 1988. The effective date of the temporary guideline amendments is June 15, 1988.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Guidelines Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements are not applicable to judicial branch agencies. However, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provision of 5 U.S.C. 553 applicable to the routine promulgation of sentencing guidelines by the Sentencing Commission. Pursuant to this directive, proposed amendments to the guidelines were published in the **Federal Register** on February 19, 1988 (53 FR 5103) and a public hearing was held in Washington, DC on March 22, 1988. After review of the public comment received on the amendments, the Commission voted unanimously (6–0) to promulgate the regular amendments. The regular amendments were transmitted to the Congress on April 18, 1988.

Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) authorizes the Commission to adopt temporary guidelines or amendments under certain limited circumstances. The Commission understands the advance notice, comment, and hearing provisions that apply to the promulgation of regular guidelines to be inapplicable under such circumstances. Absent contrary action, temporary guidelines or amendments remain in effect until and during the pendency of the next report to the Congress pursuant to 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were submitted to Congress on April 13, 1987. Technical, clarifying and conforming amendments were submitted on May 1, 1987. As so amended, the sentencing guidelines and policy statements were published in the **Federal Register** on May 13, 1987 (52 FR 18046). In October 1987 the Commission revised the official commentary and amended one policy statement (52 FR 44674). Effective January 15, 1988, the Commission adopted the October 1987 revisions and certain other temporary revisions to the guidelines pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, December 7, 1987). (53 FR 1286.)

Reasons for Additional Temporary Amendments: Based on testimony received at its most recent public hearing, additional public comment, and evaluations from judges, attorneys, and probation officers applying the guidelines, the Commission has learned that users found certain aspects of the guidelines and commentary unclear or otherwise problematic, thereby resulting in inconsistent interpretations. Furthermore, in a number of instances, clerical or technical errors in the guidelines or commentary were likely to lead to application errors. The Commission determined that the prevention of application errors and the alleviation of certain specific problems, such as the use of information from defendants who cooperated with the government in the investigation or prosecution of other crimes, constituted urgent and compelling reasons to make various amendments. Additionally, in order to ease the workload on the court system, the Commission has exempted Class B and C misdemeanors and infractions (petty offenses) from the operation of the guidelines. The Commission determined that for practical reasons, exemption of petty offenses from guideline application constituted urgent and compelling reasons.

Finally, the Commission concluded that certain guidelines and commentary should be revised promptly to conform to recently-enacted legislation pertaining to criminal offenses, as contemplated by section 21(a)(2) of the Sentencing Act of 1987. The specific reasons for each amendment are listed immediately after that amendment in the material that follows.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a), (p), (x)); sec. 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182).

William W. Wilkins,
Chairman.

I. Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of Title 28, United States Code, the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor.

1. Temporary Amendments Effective January 15, 1988

Pursuant to Section 21 of the Sentencing Act of 1987, the Commission exercised its authority to promulgate, effective January 15, 1988, a set of

temporary amendments to the guidelines, including revised and reorganized guideline commentary. The temporary amendments were subsequently transmitted to the Congress. The Commission hereby incorporates those amendments by reference [1] and now submits them to the Congress as permanent amendments pursuant to 28 U.S.C. 994(p).

Reason for Amendment: These amendments are promulgated to enhance the clarity of the guidelines and for the purposes stated in the specific amendments.

2. Correction of Typographical Errors

(a) In § 2R1.1, delete the word "substract" and insert in lieu thereof "subtract".

(b) In § 2X1.1(b)(3), delete the words "if the" and insert in lieu thereof "i.e., the".

(c) In § 3D1.2(d), delete the citation "§ 2K3.3" and insert in lieu thereof "§ 2K2.3".

Reason for Amendment: These amendments are promulgated to correct typographical errors.

3. Promulgation of New Guideline § 2A2.4 (Obstructing or Impeding Officers)

(a) In Chapter Two, Part A, immediately following the commentary accompanying § 2A2.3, insert the following new guideline and accompanying commentary:

"§ 2A2.4. Obstructing or Impeding Officers.

(a) Base Offense Level: 6

(b) Specific Offense Characteristic

(1) If the conduct involved striking, beating, or wounding, increase by 3 levels.

(c) Cross Reference

(1) If the defendant is convicted under 18 U.S.C. 111 and the conduct constituted aggravated assault, apply § 2A2.2 (Aggravated Assault).

Commentary

Statutory Provisions: 18 U.S.C. 111, 1501, 1502, 3056(d).

Application Notes:

1. Do not apply § 3A1.2 (Official Victim). The base offense level reflects the fact that the victim was a governmental officer performing official duties.

2. "Striking, beating, or wounding" is discussed in the Commentary to § 2A2.3 (Minor Assault).

3. The base offense level does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).

Background: Violations of 18 U.S.C. 1501, 1502, and 3056(d) are misdemeanors; violation of 18 U.S.C. 111 is a felony. The guideline has been drafted to provide offense levels that are identical to those otherwise provided for assaults involving an official victim; when no assault is involved, the offense level is 6.".

(b) In the Commentary to § 2A2.3 captioned "Statutory Provisions", delete "111,".

(c) In Appendix A (Statutory Index), on the line beginning "18 U.S.C. 111" delete:

"2A2.3" and insert in lieu thereof "2A2.4", on the line beginning "18 U.S.C. 1501" delete "2A2.3" and insert in lieu thereof "2A2.4", and insert the following in the appropriate place:

18 U.S.C. 1502 ..... 2A2.4
18 U.S.C. 3056(d) ..... 2A2.4.

Reason for Amendment: The Commission has promulgated this amendment as part of its continuing effort to make the guidelines more comprehensive. As the guidelines system evolves, additional criminal statutes not specifically addressed in the initial set of guidelines will be covered. This new guideline is consistent with related guidelines in Chapter 2, Part A.

4. Promulgation of New Guideline § 2A5.3 (Committing Certain Crimes Aboard Aircraft)

(a) In Chapter One, Part A, immediately following the commentary accompanying § 2A5.2, insert the following new guideline and accompanying commentary:

"§ 2A5.3. Committing Certain Crimes Aboard Aircraft.

(a) Base Offense Level: The offense level applicable to the underlying offense.

Commentary

Statutory Provision: 49 U.S.C. 1472(k)(1).

Application Notes:

1. "Underlying offense" refers to the offense listed in 49 U.S.C. 1472(k)(1) that the defendant is convicted of violating.

2. If the conduct intentionally or recklessly endangered the safety of the aircraft or passengers, an upward departure may be warranted.".

(b) In Appendix A (Statutory Index), insert the following in the appropriate place:

"49 U.S.C. 1472(k)(1) 2A5.3".

Reason for Amendment: The Commission has promulgated this amendment as part of its continuing effort to make the guidelines more comprehensive. As the guidelines system evolves, additional criminal statutes not specifically addressed in the initial set of guidelines will be covered. This new guideline reflects the fact that 49 U.S.C. 1472(k)(1) is a jurisdictional statute.

5. Amendment of Guideline § 2D1.5 (Continuing Criminal Enterprise)

Delete § 2D1.5 and the commentary thereto, and in lieu thereof insert the following:

"§ 2D1.5. Continuing Criminal Enterprise.

(a) Base Offense Level: 36

Commentary

Statutory Provision: 21 U.S.C. 848.

Application Notes:

1. Do not apply any adjustment from Chapter Three, Part B (Role in the Offense).

2. If as part of the enterprise the defendant sanctioned the use of violence, if the quantity of drugs substantially exceeds that required for level 36 in the drug quantity table, or if the number of persons managed by the defendant is extremely large, an upward departure may be warranted.

3. Under 21 U.S.C. 848, certain conduct for which the defendant has previously been sentenced may be charged as part of the instant offense to establish a "continuing series of violations." A sentence resulting from a conviction sustained prior to the last overt act of the instant offense is to be considered a prior sentence under § 4A1.2(a)(1) and not part of the instant offense.

4. Violations of 21 U.S.C. 848 will be grouped with other drug offenses for the purpose of applying Chapter Three, Part D (Multiple Counts).

Background: Because a conviction under 21 U.S.C. 848 establishes that a defendant controlled and exercised authority over one of the most serious types of ongoing criminal activity, this guideline provides a base offense level of 36. An adjustment from Chapter Three, Part B is not authorized because the offense level of this guideline already reflects an adjustment for role in the offense.

Title 21 U.S.C. 848 provides a 20-year minimum mandatory penalty for second convictions and a mandatory life sentence for principal administrators of extremely large enterprises. If the application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence. See § 5G1.1(b).".

Reason for Amendment: The Commission has promulgated this amendment to ensure that the guideline adequately reflects the seriousness of the criminal conduct. The previous guideline specified sentences that were lower than sentences typically imposed on defendants convicted of engaging in a continuing criminal enterprise, a result that the Commission did not intend. The

[1] The revised and reorganized commentary is published at 52 FR 44674–44779 (1987). The remaining temporary amendments are published at 53 FR 1286–1293 (1988).

guideline is also amended to delete, as unnecessary, provisions that referred to statutory minimum sentences.

II. Temporary Amendments to the Sentencing Guidelines

Pursuant to the emergency guidelines promulgation authority provided in section 21 of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987), the Sentencing Commission has promulgated, effective June 15, 1988, additional temporary amendments to previously issued sentencing guidelines, policy statements, and official commentary.

The format under which these temporary amendments are presented is designed to facilitate a comparison between previously existing and amended provisions in the event it becomes necessary to reference the former guideline or commentary language.

Chapter One, Part B, is amended by inserting the following additional guideline and accompanying commentary:

"§ 1B1.8. Use of Certain Information.

(a) Where a defendant agrees to cooperate with the government by providing information concerning unlawful activities of others, and the government agrees that self-incriminating information so provided will not be used against the defendant, then such information shall not be used in determining the applicable guideline range, except to the extent provided in the agreement.

(b) The provisions of subsection (a) shall not be applied to restrict the use of information:

(1) Known to the government prior to entering into the cooperation agreement;

(2) In a prosecution for perjury or giving a false statement; or

(3) In the event there is a breach of the cooperation agreement.

Commentary

Application Notes:

1. This provision does not authorize the government to withhold information from the court but provides that self-incriminating information obtained under a cooperation agreement is not to be used to determine the defendant's guideline range. Under this provision, for example, if a defendant is arrested in possession of a kilogram of cocaine and, pursuant to an agreement to provide information concerning the unlawful activities of co-conspirators, admits that he assisted in the importation of an additional three kilograms of cocaine, a fact not previously known to the government, this admission would not be used to increase his applicable guideline range, except to the extent provided in the agreement. Although this guideline, consistent with the general structure of these guidelines, affects only the determination of the guideline range, the policy of the Commission is that where a defendant as a result of a cooperation agreement with the government to assist in the investigation or prosecution of other offenders reveals information which implicates him in unlawful conduct not already known to the government, such defendant should not be subject to an increased sentence by virtue of that cooperation where the government agreed that the information revealed would not be used for such purpose.

2. The Commission does not intend this guideline to interfere with determining adjustments under Chapter Four, Part A (Criminal History) or § 4B1.1 (Career Offender) (e.g., information concerning the defendant's prior convictions). The Probation Service generally will secure information relevant to the defendant's criminal history independent of information the defendant provides as part of his cooperation agreement.

3. On occasion the defendant will provide incriminating information to the government during plea negotiation sessions before a cooperation agreement has been reached. In the event no agreement is reached, use of such information is governed by the provisions of Rule 11 of the Federal Rules of Criminal Procedure and Rule 408 of the Rules of Evidence.

4. As with the statutory provisions governing use immunity, 18 U.S.C. 6002, this guideline does not apply to information used against the defendant in a prosecution for perjury, giving a false statement, or in the event the defendant otherwise fails to comply with the cooperation agreement.".

The purpose of this amendment is to facilitate cooperation agreements by ensuring that certain information revealed by a defendant, as part of an agreement to cooperate with the government by providing information concerning unlawful activities of others, will not be used to increase the guideline sentence. The effective date of this amendment is June 15, 1988.

Chapter One, Part B, is amended by inserting the following additional guideline and accompanying commentary:

"§ 1B1.9. Petty Offenses.

The sentencing guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction (petty offense).

Commentary

Application Notes:

1. Notwithstanding any other provision of the guidelines, the court may impose any sentence authorized by statute for each count that is a petty offense. A petty offense is any offense for which the maximum sentence that may be imposed does not exceed six months' imprisonment.

2. The guidelines for sentencing on multiple counts do not apply to counts that are petty offenses. Sentences for petty offenses may be consecutive to or concurrent with sentences imposed on other counts. In imposing sentence, the court should, however, consider the relationship between the petty offense and any other offenses of which the defendant is convicted.

3. All other provisions of the guidelines should be disregarded to the extent that they purport to cover petty offenses.

Background: For the sake of judicial economy, the Commission has voted to adopt a temporary amendment to exempt all petty offenses from the coverage of the guidelines. Consequently, to the extent that some published guidelines may appear to cover petty offenses, they should be disregarded even if they appear in the Statutory Index.".

The purpose of this guideline is to delete coverage of petty offenses. The effective date of this amendment is June 15, 1988.

§ 1B1.1. Larceny, Embezzlement, and Other Forms of Theft.

Section 2B1.1(b)(1) is amended by deleting "value of the property taken" and inserting in lieu thereof "loss".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by deleting:

"Loss is to be based upon replacement cost to the victim or market value of the property, whichever is greater.",

and inserting in lieu thereof:

" 'Loss' means the value of the property taken, damaged, or destroyed. Ordinarily, when property is taken or destroyed the loss is the fair market value of the particular property at issue. Where the market value is difficult to ascertain or inadequate to measure harm to the victim, the court may measure loss in some other way, such as reasonable replacement cost to the victim. When property is damaged the loss is the cost of repairs, not to exceed the loss had the property been destroyed. In cases of partially completed conduct, the loss is to be determined in accordance with the provisions of § 2X1.1 (Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline). E.g., in the case of the theft of a government check or money order, loss refers to the loss that would have occurred if the check or money order had been cashed. Similarly, if a defendant is apprehended in the process of taking a vehicle, the loss refers to the value of the vehicle even if the vehicle is recovered immediately.".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B1.2. Receiving Stolen Property.

Section 2B1.2(b)(1) is amended by deleting "taken", and inserting "stolen" immediately before "property".

The purpose of this amendment is to correct a clerical error. The effective date of this amendment is June 15, 1988.

§ 2B1.3. Property Damage or Destruction (Other than by Arson or Explosives).

Section 2B1.3(b)(1) is amended by deleting "amount of the property damage or destruction, or the cost of restoration," and inserting in lieu thereof "loss".

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 2 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B2.1. Burglary of a Residence.

Section 2B2.1(b)(2) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B2.2. Burglary of Other Structures.

Section 2B2.2(b)(2) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B2.2 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2B3.1. Robbery.

Section 2B3.1(b)(1) is amended by deleting "value of the property taken or destroyed" and inserting in lieu thereof "loss".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 3 by deleting "property" and inserting in lieu thereof "loss".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by inserting "or attempted robbery" immediately following "robbery".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations.

The Commentary to § 2E1.1 captioned "Application Notes" is amended in Note 1 by deleting:

"For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.",

and inserting in lieu thereof:

"Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise.

The Commentary to § 2E1.2 captioned "Application Notes" is amended in Note 1 by deleting:

"For purposes of subsection (a)(2), determine the offense level for each underlying offense. Use the provisions of Chapter Three, Part D (Multiple Counts), to determine the offense level, treating each underlying offense as if contained in a separate count of conviction.",

and inserting in lieu thereof:

"Where there is more than one underlying offense, treat each underlying offense as if contained in a separate count of conviction for the purposes of subsection (a)(2). To determine whether subsection (a)(1) or (a)(2) results in the greater offense level, apply Chapter Three, Parts A, B, C, and D to both (a)(1) and (a)(2). Use whichever subsection results in the greater offense level.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 2E5.2. Theft or Embezzlement From Employee Pension and Welfare Benefit Plans.

Section 2E5.2(b)(3) is amended by deleting "value of the property stolen" and inserting in lieu thereof "loss".

The Commentary to § 2E5.2 captioned "Application Notes" is amended in Note 1 by inserting immediately following the first sentence:

"Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2E5.4. Embezzlement or Theft From Labor Unions in the Private Sector.

Section 2E5.4(b)(3) is amended by deleting "value of the property stolen" and inserting in lieu thereof "loss".

The Commentary to § 2E5.4 captioned "Application Notes" is amended in Note 1 by inserting immediately following the first sentence:

"Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

The purpose of this amendment is to clarify the guideline in respect to the determination of loss. The effective date of this amendment is June 15, 1988.

§ 2F1.1. Fraud and Deceit.

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by deleting "291" and inserting in lieu thereof "290".

The purpose of this amendment is to delete an inadvertently included infraction. The effective date of this amendment is June 15, 1988.

§ 2G2.2. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor.

Section 2G2.2(b)(1) is amended by inserting "a prepubescent minor or" immediately following "involved".

The purpose of this amendment is to provide an alternative measure to be used in determining whether the material involved an extremely young minor for cases in which the actual age of the minor is unknown. The effective date of this amendment is June 15, 1988.

§ 2X5.1. Other Offenses.

Section 2X5.1 and the Commentary thereto is amended by deleting the entire text, including the title, as follows:

"Other Offenses (Policy Statement)

For offenses for which no specific guideline has been promulgated:

(a) If the offense is a felony or class A misdemeanor, the most analogous guideline should be applied. If no sufficiently analogous guideline exists, any sentence that is reasonable and consistent with the purposes of sentencing should be imposed. See 18 U.S.C. 3553(b).

(b) If the offense is a Class B or C misdemeanor or an infraction, any sentence that is reasonable and consistent with the purpose of sentencing should be imposed. See 18 U.S.C. 3553(b).

Commentary

Background: This policy statement addresses cases in which a defendant has been convicted of an offense for which no specific guideline has been written. For a felony or a class A misdemeanor (see 18 U.S.C. 3559(a) and 3581(b)), the court is directed to apply the most analogous guideline. If no sufficiently analogous guideline exists, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b).

For a class B or C misdemeanor or an infraction (see 18 U.S.C. 3559(a) and 3581(b)) that is not covered by a specific guideline, the court is directed to sentence without reference to a specific guideline or guideline range, as provided in 18 U.S.C. 3553(b). An inquiry as to whether there is a sufficiently analogous guideline that might be applied is not required. The Commission makes this distinction in treatment because for many lesser offenses (e.g., traffic infractions), generally handled under assimilative offense provisions by magistrates, there will be no sufficiently analogous guideline, and a case-by-case determination in respect to this issue for the high volume of cases processed each year would be unduly burdensome and would not significantly reduce disparity.",

and inserting in lieu thereof:

"Other Offenses

If the offense is a felony or Class A misdemeanor for which no guideline expressly has been promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. 3553(b) shall control.

Commentary

Background: Many offenses, especially assimilative crimes, are not listed in the Statutory Index or in any of the lists of Statutory Provisions that follow each offense guideline. Nonetheless, the specific guidelines that have been promulgated cover the type of criminal behavior that most such offenses proscribe. The court is required to determine if there is a sufficiently analogous offense guideline, and, if so, to apply the guideline that is most analogous. Where there is no sufficiently analogous guideline, the provisions of 18 U.S.C. 3553(b) control. That statute provides in relevant part as follows: "In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in [18 U.S.C. 3553] subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission."

The purposes of this amendment are to make the section a binding guideline (as the Commission originally intended with respect to felonies and Class A misdemeanors) rather than a policy statement, to delete language relating to petty offenses, and to conform and clarify the Commentary. The effective date of this amendment is June 15, 1988.

§ 3D1.2. Groups of Closely-Related Counts.

Section 3D1.2(d) is amended by deleting:

"(d) When counts involve the same general type of offense and the guidelines for that type of offense determine the offense level primarily on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. Offenses of this kind are found in Chapter Two, Part B (except §§ 2B2.1–2B3.3), part D (except §§ 2D1.6–2D3.4), Part E (except §§ 2E1.1–2E2.1), Part F, Part G (§§ 2G2.2–2G3.1), Part K (§ 2K2.3), Part N (§§ 2N2.1, 2N3.1), Part Q (§§ 2Q2.1, 2Q2.2), Part R, Part S, and Part T. This rule also applies where the guidelines deal with offenses that are continuing, e.g., §§ 2L1.3 and 2Q1.3(b)(1)(A).",

and inserting in lieu thereof:

"(d) Counts are grouped together if the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Offenses covered by the following guidelines are specifically included under this subsection:

§§ 2B1.1, 2B1.2, 2B1.3, 2B4.1, 2B5.1, 2B5.2, 2B5.3, 2B5.4, 2B6.1;
§§ 2D1.1, 2D1.2, 2D1.3, 2D1.5;
§§ 2E4.1, 2E5.1, 2E5.2, 2E5.4, 2E5.6;
§§ 2F1.1, 2F1.2;
§ 2N3.1;
§ 2R1.1;
§§ 2S1.1, 2S1.2, 2S1.3;
§§ 2T1.1, 2T1.2, 2T1.3, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1, 2T3.2.

Specifically excluded from the operation of this subsection are:

all offenses in Part A;
§§ 2B2.1, 2B2.2, 2B2.3, 2B3.1, 2B3.2, 2B3.3;
§§ 2C1.1, 2C1.5;
§§ 2D2.1, 2D2.2, 2D2.3;
§§ 2E1.3, 2E1.4, 2E1.5, 2E2.1;
§§ 2G1.1, 2G1.2, 2G2.1, 2G3.2;
§§ 2H1.1, 2H1.2, 2H1.3, 2H1.4, 2H2.1, 2H4.1;
§§ 2L1.1, 2L2.1, 2L2.2, 2L2.3, 2L2.4, 2L2.5;
§§ 2M2.1, 2M2.3, 2M3.1, 2M3.2, 2M3.3, 2M3.4, 2M3.5, 2M3.6, 2M3.7, 2M3.8, 2M3.9;
§§ 2P1.1, 2P1.2, 2P1.3, 2P1.4.

For multiple counts of offenses that are not listed, grouping under this subsection may or may not be appropriate; a case-by-case determination must be made based upon the facts of the case and the applicable guidelines (including specific offense characteristics and other adjustments) used to determine the offense level.

Exclusion of an offense from grouping under this subsection does not necessarily preclude grouping under another subsection.".

The purpose of this amendment is to clarify the guideline. The effective date of this amendment is June 15, 1988.

§ 4B1.3. Criminal Livelihood.

Section 4B1.3 is amended by deleting:

"In no such case will the defendant be eligible for a sentence of probation."

and inserting in lieu thereof:

", unless § 3E1.1 (Acceptance of Responsibility) applies, in which event his offense level shall be not less than 11.".

The Commentary to § 4B1.3 captioned "Application Note" is amended by deleting "(e.g., an ongoing fraudulent scheme)", "(e.g., a number of burglaries or robberies, or both)", and "or petty".

The Commentary to § 4B1.3 captioned "Background" is amended by deleting "that offense" and inserting in lieu thereof "an offense", and by deleting "Under this provision, the offense level is raised to 13, if it is not already 13 or greater".

The purpose of this amendment is to provide that the adjustment from § 3E1.1 (Acceptance of Responsibility) applies to cases under § 4B1.3 (Criminal Livelihood). The effective date of this amendment is June 15, 1988.

CHAPTER FIVE, PART J—RELIEF FROM DISABILITY PERTAINING TO CERTAIN EMPLOYMENT (RETITLED RELIEF FROM DISABILITY)

Chapter 5, Part J is amended in the title of the Part by deleting "PERTAINING TO CERTAIN EMPLOYMENT".

The purpose of this amendment is to eliminate the possible inference that this part covers only employment for compensation. The effective date of this amendment is June 15, 1988.

§ 5J1.1. Relief From Disability Pertaining to Certain Employment (Policy Statement) (retitled Relief From Disability. Pertaining to Convicted Persons Prohibited From Holding Certain Positions (Policy Statement)

Section 5J1.1 is amended by deleting the entire text, including the title, as follows:

"Relief From Disability Pertaining to Certain Employment (Policy Statement)

"With regard to labor racketeering offenses, a part of the punishment imposed by 29 U.S.C. 504 and 511 is the prohibition of convicted persons from service in labor unions, employer associations, employee benefit plans, and as labor relations consultants. Violations of these provisions are felony offenses. Persons convicted after October 12, 1984, may petition the sentencing court to reduce the statutory disability (thirteen years after sentence or imprisonment, whichever is later) to a lesser period (not less than three years after entry of judgment in the trial court). After November 1, 1987, petitions for exemption from the disability that were formerly administered by the United States Parole Commission will be transferred to the courts. Relief shall not be given in such cases to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he has been rehabilitated since commission of the crime.",

and inserting in lieu thereof the following:

"Relief From Disability Pertaining to Convicted Persons Prohibited From Holding Certain Positions (Policy Statement)

"A collateral consequence of conviction of certain crimes described in 29 U.S.C. 504 and 1111 is the prohibition of convicted persons from service and employment with labor unions, employer associations, employee pension and welfare benefit plans, and as labor relations consultants in the private sector. A convicted person's prohibited service or employment in such capacities without having been granted one of the following three statutory procedures of administrative or judicial relief is subject to criminal prosecution. First, a disqualified person whose citizenship rights have been fully restored to him or her in the jurisdiction of conviction, following the revocation of such rights as a result of the disqualifying conviction, is relieved of the disability. Second, a disqualified person convicted after October 12, 1984, may petition the sentencing court to reduce the statutory length of disability (thirteen years after date of sentencing or release from imprisonment, whichever is later) to a lesser period (not less than three years after date of conviction or release from imprisonment, whichever is later). Third, a disqualified person may petition either the United States Parole Commission or a United States District Court judge to exempt his or her service or employment in a particular prohibited capacity pursuant to the procedures set forth in 29 U.S.C. 504(a)(B) and 1111(a)(B). In the case of a person convicted of a disqualifying crime committed before November 1, 1987, the United States parole Commission will continue to process such exemption applications.

"In the case of a person convicted of a disqualifying crime committed on or after November 1, 1987, however, a petition for exemption from disability must be directed to a United States District Court. If the petitioner was convicted of a disqualifying federal offense, the petition is directed to the sentencing judge. If the petitioner was convicted of a disqualifying state or local offense, the petition is directed to the United States District Court for the district in which the offense was committed. In such cases, relief shall not be given to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he or she has been rehabilitated since commission of the disqualifying crime and can therefore be trusted not to endanger the organization in the position for which he or she seeks relief from disability.".

The purpose of this amendment is to clarify the policy statement and conform it to the pertinent provisions of the Sentencing Act of 1987. The effective date of this amendment is June 15, 1988.

§ 5K2.0. Grounds for Departure (Policy Statement).

Section 5K2.0 is amended by deleting "an aggravating or mitigating circumstance exists that was" and inserting in lieu thereof "there exists an aggravating or mitigating circumstance of a kind, or to a degree".

The purpose of this amendment is to conform the quotation in this section to the wording in the Sentencing Act of 1987. The effective date of this amendment is June 15, 1988.

§ 6A1.1. Presentence Report.

Section 6A1.1 is amended by deleting "(a)" and deleting:

"(b) The presentence report shall be disclosed to the defendant, counsel for the defendant and the attorney for the government, to the maximum extent permitted by Rule 32(c), Fed. R. Crim. P. Disclosure shall be made at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. 18 U.S.C. 3552(d).".

The purpose of this amendment is to delete material more properly covered elsewhere. See § 6A1.2 (Disclosure of Presentence Report; Issues in Dispute (Policy Statement)). The effective date of this amendment is June 15, 1988.

§ 6A1.2. Position of Parties with Respect to Sentencing Factors (Retitled Disclosure of Presentence Report; Issues in Dispute (Policy Statement).)

Section 6A1.2 is amended by deleting:

"Position of Parties with Respect to Sentencing Factors

(a) After receipt of the presentence report and within a reasonable time before sentencing, the attorney for the government and the attorney for the defendant, or the pro se defendant, shall each file with the court a written statement of the sentencing factors to be relied upon at sentencing. The parties are not precluded from asserting additional sentencing factors if notice of the intention to rely upon another factor is filed with the court within a reasonable time before sentencing.

(b) Copies of all sentencing statements filed with the court shall be contemporaneously served upon all other parties and submitted to the probation officer assigned to the case.

(c) In lieu of the written statement required by § 6A1.2(a), any party may file:

(1) A written statement adopting the findings of the presentence report;

(2) A written statement adopting such findings subject to certain exceptions or additions; or

(3) A written stipulation in which the parties agree to adopt the findings of the presentence report or to adopt such findings subject to certain exceptions or additions.

(d) A district court may, by local rule, identify categories of cases for which the parties are authorized to make oral statements at or before sentencing, in lieu of the written statement required by this section.

(e) Except to the extent that a party may be privileged not to disclose certain information, all statements filed with the court or made orally to the court pursuant to this section shall:

(1) Set forth, directly or by reference to the presentence report, the relevant facts and circumstances of the actual offense conduct and offender characteristics; and

(2) Not contain misleading facts.",

and inserting in lieu thereof the following:

"Disclosure of Presentence Report; Issues in Dispute (Policy Statement)

Courts should adopt procedures to provide for the timely disclosure of the presentence report; the narrowing and resolution, where feasible, of issues in

dispute in advance of the sentencing hearing; and the identification for the court of issues remaining in dispute. See Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference (August 1987).".

This amendment deletes this guideline and inserts in lieu thereof a general policy statement. The Commission has determined that this subject is more appropriately covered by the Model Local Rule for Guideline Sentencing prepared by the Probation Committee of the Judicial Conference. The effective date of this amendment is June 15, 1988.

Appendix A—Statutory Index

Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

18 U.S.C. 911..... 2F1.1, 2L2.2,
18 U.S.C. 922(n)..... 2K2.1,
18 U.S.C. 2071..... 2B1.1, 2B1.3,
26 U.S.C. 7212(a)..... 2A2.2, 2A2.3,
42 U.S.C. 2278(a)(c)..... 2B2.3,
46 U.S.C. 3718(b)..... 2K3.1,
47 U.S.C. 553(b)(2)..... 2B5.3,
49 U.S.C. 1472(h)(2)..... 2K3.1.

The purpose of this amendment is to make the statutory index more comprehensive. The effective date of this amendment is June 15, 1988.

Appendix A is amended by deleting:

7 U.S.C. 166..... 2N2.1,
7 U.S.C. 213..... 2F1.1,
7 U.S.C. 473..... 2N2.1;

by deleting:

7 U.S.C. 511e..... 2N2.1,
7 U.S.C. 511k..... 2N2.1,

and inserting in lieu thereof:

7 U.S.C. 511d..... 2N2.1,
7 U.S.C. 511i..... 2N2.1;

by deleting:

7 U.S.C. 586..... 2N2.1,
7 U.S.C. 596..... 2N2.1,
7 U.S.C. 608e–1..... 2N2.1;

by deleting:

16 U.S.C. 117(c)..... 2B1.1, 2B1.3,

and inserting in lieu thereof:

16 U.S.C. 117c..... 2B1.1, 2B1.3;

by deleting:

16 U.S.C. 414..... 2B2.3,
16 U.S.C. 426i..... 2B1.1, 2B1.3,
16 U.S.C. 428i..... 2B1.1, 2B1.3,
18 U.S.C. 291..... 2C1.3, 2F1.1,
26 U.S.C. 7269..... 2T1.2,
41 U.S.C. 51..... 2B4.1,
42 U.S.C. 4012..... 2Q1.3,
50 U.S.C. 2410..... 2M5.1;

and by deleting the first time it appears:

50 U.S.C. App. 462..... 2M4.1.

The purposes of this amendment are to correct clerical errors and delete inadvertently included statutes. The effective date of this amendment is June 15, 1988.

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federal register

Friday
April 29, 1988

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 513, 541, and 544

Inmate Control, Custody, Care, Treatment and Instruction; Rules and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

Control, Custody, Care, Treatment, and Instruction of Inmates Release of Information to Law Enforcement Agencies

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Release of Information to Law Enforcement Agencies. The rule authorizes the Bureau of Prisons to release to a law enforcement agency information concerning federal inmates transferred to a residential community treatment center located within the jurisdiction of that agency. This information is intended to be used by the requesting agency solely for law enforcement purposes.

EFFECTIVE DATE: June 1, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is publishing its final rule on Release of Information to Law Enforcement Agencies. A proposed rule on this subject was published in the **Federal Register** on March 2, 1987 (at 52 FR 6297). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register.**

The final rule is intended to implement the provisions of 18 U.S.C. 4082(f). Public Law 99–646, Criminal Law and Procedure Technical Amendments Act of 1986, authorizes the Bureau of Prisons to make available to the head of any law enforcement agency of a state or of a unit of local government information with respect to Federal prisoners who have been convicted of felony offenses against the United States and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction. In addition to those provisions published in the proposed rule, the final rule discusses the type of information that may be released (e.g., names, dates of birth, nature of the offense) and includes a provision authorizing the Bureau of Prisons to terminate or suspend further release of information to an agency that disseminates requested information to other outside sources.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

In § 513.20(a), a new sentence is added to describe the type of information the Bureau may provide as set forth in 18 U.S.C. 4082(f). This information includes: names, dates of birth, FBI numbers, nature of the offenses against the United States, fingerprints, photographs, and the designated community treatment centers, with prospective dates of release.

Section 513.20(b) restricts the dissemination of requested information outside of the receiving agency. In light of this, the Bureau is adding a sentence to § 513.20(b) which states, "If an agency disseminates information contrary to this restriction, the Bureau of Prison may terminate or suspend release of information to that agency."

A commenter to § 513.20 suggests there are no "safeguards as to how this information can or will be used," and that providing "segmented information excluding details" may be a "threat against that individual's safety and well being". We do not agree. The intent of this rule is to provide law enforcement agencies *specific* information that may be used by the requesting agency solely for law enforcement purposes. As a safeguard, the Bureau will require agencies to include, in their original request, a statement that the agency is aware of the information they will be receiving and the conditions under which the information is provided. The request also is to include a statement that the agency understands that the information may only be used for law enforcement purposes, that the information may not be disseminated to outside sources, and that if the agency does disseminate the information contrary to this restriction, the Bureau of Prisons may terminate or suspend further release of information to that agency. Given the specificity of the information and the condition under which an agency must agree in order to receive such information, the Bureau of Prisons does not perceive any threat against an individual's safety or well being.

List of Subjects in 28 CFR Part 513

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V, of 28 CFR is amended as set forth below.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

Dated: April 25, 1988.

In consideration of the foregoing, amend Subchapter A of 28 CFR, Chapter V as follows: In Subchapter A, amend Part 513 by adding a new Subpart C to read as follows:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

I. The authority citation for Part 513 is revised to read as follows:

Authority: 5 U.S.C. 301, 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

II. In Part 513, add a new Subpart C to read as follows:

Subpart C—Release of Information to Law Enforcement Agencies

Sec.

Subpart C—Release of Information to Law Enforcement Agencies

§ 513.20 Release of information to law enforcement agencies.

(a) The Bureau of Prisons will provide to the head of any law enforcement agency of a state or of a unit of local government in a state information on federal prisoners who have been convicted of felony offenses and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction. Law enforcement personnel interested in obtaining this information must forward a written request to the appropriate Regional Community Programs Administrator (see 28 CFR Part 503 for the mailing address). The type of information that the Bureau of Prisons

may provide is set forth in 18 U.S.C. 4082(f). That information includes: names, dates of birth, FBI numbers, nature of the offenses against the United States, fingerprints, photographs, and the designated community treatment centers, with prospective dates of release.

(b) Any law enforcement agency which receives information under this rule may not disseminate such information outside of such agency. If an agency disseminates information contrary to this restriction, the Bureau of Prisons may terminate or suspend release of information to that agency.

[FR Doc. 88-9544 Filed 4-28-88; 8:45 am]

BILLING CODE 4410-05-M

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28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates Adult Basic Education (ABE) Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on adult basic education (ABE) programs. These amendments are intended to clarify an issue concerning the promotion of an inmate above the fourth grade level of pay when that inmate has been exempted from the rule's mandatory ABE educational requirements.

EFFECTIVE DATE: June 1, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its final rule on adult basic education (ABE) programs. Final amendments to this rule were published in the **Federal Register** June 10, 1986 (at 51 FR 21114 *et seq.*). The Bureau published the present amendment in the **Federal Register** November 21, 1986 (at 51 FR 42166) as an interim rule to determine if any further revision or clarification would be necessary. Interested persons were invited to submit comments on the interim rule. No public comment was received and the Bureau has determined there are no further revisions required. Members of the public may submit comments concerning the present amendment by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register.**

The final rule is intended to clarify the Bureau's regulation regarding promotions to pay grades above the fourth grade level for inmates exempted by § 544.71(a) from the mandatory ABE educational requirements. The rule in § 544.71(a)(6) requires that inmates exempted under the provisions of § 544.71(a) (1), (2), or (3), ordinarily meet the 8.0 academic achievement level before they can be considered for compensation above the fourth grade level in a Federal Prisons Industries (UNICOR) or Inmate Performance Pay (IPP) work assignment. Wardens are authorized to exempt inmates from this requirement for good cause.

Based on the implementation of the sentencing provisions of the Comprehensive Crime Control Act of 1984, § 544.71(a)(2) is revised to reference 18 U.S.C. 3552(b). That section became effective November 1, 1987, and provides for studies by the Bureau of Prisons. 18 U.S.C. 4205(c) is repealed as of November 1, 1987.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 544

Education, Libraries, Prisoners, Recreation.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as set forth below.

Dated: April 25, 1988.

J. Michael Quinlan,

Director, Bureau of Prisons.

Subchapter C, Part 544, amend Subpart H as follows:

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 544—EDUCATION

A. The authority citation for Part 544, Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4081, 4082, 5006-5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart H—Adult Basic Education (ABE) Program

B. In Part 544, Subpart H, revise § 544.71 (a)(2) and (a)(6) to read as follows:

§ 544.71 Applicability.

(a) * * *

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

* * * * *

(6) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule. Inmates exempted under the provisions of paragraphs (a) (1), (2), and (3) of this § 544.71 ordinarily may not be promoted above the fourth grade of compensation unless they meet the 8.0 academic achievement level. The Warden may, for good cause, exempt individuals from this requirement, and shall document the basis for the exemption.

* * * * *

[FR Doc. 88-9543 Filed 4-28-88; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is publishing proposed amendments to its rule on Inmate Discipline and Special Housing Units. The amendments are intended to place into the rules a procedure for the disallowance of good conduct time credit. This revision is necessitated by the fact that inmates committed under the new Sentencing Reform Act provisions of the Comprehensive Crime Control Act are not eligible for statutory good time, but are eligible to receive a maximum of 54 days each year of good conduct time credit.

DATE: Comments must be received on or before May 31, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), notice is hereby given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its rule on Inmate Discipline and Special Housing Units. A final rule on this subject was published in the **Federal Register** January 5, 1988 (at 53 FR 196 et seq.).

The present amendments are intended to place into rule language Bureau of Prisons policy pertaining to the disallowance of good conduct time credits. Under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act, inmates sentenced for offenses committed on or after November 1, 1987 are not eligible for statutory good time, but are eligible to receive a maximum of 54 days of good conduct time credit per year (18 U.S.C. 3624(b)). This credit is given at the end of each year of time served and, once given, is vested. The present rule amendments authorize the Bureau's Disciplinary Hearing Officer (DHO) to disallow this credit, based on an inmate being found to have committed a prohibited act. The decision of the DHO will be final, subject only to procedural review by the Warden and by inmate appeal through the Administrative Remedy procedures.

Interested persons may participate in this proposed rulemaking by writing the previously cited address. Comments received during the public comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C of 28 CFR, Chapter V as follows: In Subchapter C, amend Part 541 by amending § 541.13 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for Part 541, Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161–4166 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart B—Inmate Discipline and Special Housing Units

2. § 541.13(a)(4) is revised to read as follows:

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) * * *

(4) *Low moderate category offenses:* The Discipline Hearing Officer shall impose at least one sanction B.1, E through P. The Discipline Hearing Officer may suspend any E through P sanction or sanctions imposed (a B.1 sanction may not be suspended). The Unit Discipline Committee shall impose at least one sanction G through P, but may suspend any sanction or sanctions imposed.

* * * * *

3. In § 541.13(a), Table 3, Prohibited Acts and Disciplinary Severity Scale, is amended by adding Sanction B.1 as a new sanction in the Greatest, High, Moderate, and Low Moderate Categories as follows:

Greatest Category—Sanction B.1 will read, "Disallow ordinarily between 50 and 75% (27–41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

High Category—Sanction B.1 will read, "Disallow ordinarily between 25 and 50% (14–27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

Moderate Category—Sanction B.1 will read, "Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended)".

Low Moderate Category—Sanction B.1 will read, "Disallow ordinarily up to 12.5% (1–7 days) of good conduct time credit availabe for year (to be used only where inmate found to have committed second offense in this category within 6 months); Disallow ordinarily up to 25% (1–14 days) of good conduct time credit available for year (to be used only where inmate found to have committed third offense in this category within 6 months) (a good conduct time sanction may not be suspended)".

4. In § 541.13, Table 4 is amended by adding a discussion of Sanction B.1 to read as follows:

Table 4.—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

* * * * *

(b.1) *Disallowance of good conduct time.* An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (includes the inmate who committed his or her crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days good conduct time credit each year (18 U.S.C. 3624(b)). Once awarded, the credit is vested, and may not be disallowed. Once disallowed, the credit may not be restored, except by immediate review or appeal action as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act. A sanction of disallowance of good conduct time may not be suspended. Only the DHO can take action to disallow good conduct time. The DHO shall consider the severity of the prohibited act and the suggested disallowance guidelines in making a determination to disallow good conduct time. A decision to go above the guideline range is warranted for a greatly aggravated offense or where there is a repetitive

violation in one of the severity categories (Greatest, High, Moderate, Low Moderate). A decision to go below the guidelines is warranted for strong mitigating factors. Any decision outside the suggested disallowance guidelines is to be documented and justified in the DHO report.

The decision of the DHO is final and is subject only to review by the Warden to ensure conformity with the provisions of the disciplinary policy and by inmate appeal through the administrative remedy procedure. The DHO is to ensure that the inmate is notified that any appeal of a disallowance of good conduct time must be made within the time frames established in the Bureau's rule on administrative remedy procedures.

* * * * *

Dated: April 25, 1988.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 88-9545 Filed 4-28-88; 8:45 am]

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